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*26/5*  
**No. 12437**

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**United States  
Court of Appeals  
for the Ninth Circuit.**

*— 2616*

JAMES ANTHONY ALLEN,

Appellant,

*see vol.*  
vs.

UNITED STATES OF AMERICA,

Appellee.

---

**Transcript of Record  
In Three Volumes  
Volume I  
(Pages 1 to 450)**

---

**Appeal from the United States District Court,  
Eastern District of Washington  
Northern Division.**

**FILED.**

**FEB 21 1950**

**PAUL P. O'BRIEN,  
CLERK**



No. 12437

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United States  
Court of Appeals  
for the Ninth Circuit.

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JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

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Transcript of Record  
In Three Volumes  
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Eastern District of Washington

Northern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the  
Eastern District of Washington, Northern Division  
Criminal No. C-7975

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ANTHONY ALLEN, FRANCIS CLAY-  
TON KEANE, and JOSEPH VALENTINE  
GRISMER,

Defendants.

## INDICTMENT

### Violations:

Title 18, U.S.C.A., Sec. 338,

Using Mails to Defraud.

Title 15, U.S.C.A., Sec. 77(q),

Fraud in Sale of Securities.

Title 18, U.S.C.A., Sec. 88,

Conspiracy.

### The grand jury charges:

#### Count I.

(Using Mails to Defraud 18-338)

1. Prior to June 1, 1945, and continuing to the date of this indictment, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, devised and intended to devise the following device, scheme and artifice to defraud purchasers and prospective purchasers of stock of Lucky Friday Extension Mining Company and

Pilot Silver-Lead Mines, Inc., both Idaho corporations (said corporations hereinafter sometimes referred to as "Extension" and "Pilot," respectively, and said purchasers hereinafter sometimes referred to as "investors"), and to obtain money and property by means of false and fraudulent pretenses, representations and promises: That said defendants would and did promote and organize Extension and Pilot and issue a large portion of the stock of these corporations to themselves, but would and did conceal the fact that defendant Allen was a promoter of these corporations or was to receive any part of the stock to be taken by defendants; that defendants in order to conceal the true amount of stock issued to them would and did cause large blocks of such stock to be issued to Elmer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, under the pretense that such stock was in payment of attorneys' fees, but with the secret arrangement that a portion of such stock or the proceeds from its sale would be turned back to defendants; that defendants would and did cause these corporations to sell stock to investors upon the representation that the proceeds therefrom would be used by these corporations for the exploration and development of the mining properties of Extension and Pilot respectively; that defendants would not maintain proper books and records of account but would and did conceal from the stockholders of said corporation information concerning the receipt and expenditure of moneys of

these corporations; that defendants would and did appropriate and divert from these corporations a large amount of such corporate moneys to their own use and benefit; that further, defendants, in order to create an appearance of mining activity on the part of these corporations and to increase the market value of defendants' promotion stock of Extension and Pilot, would and did spend a small portion of the funds belonging to these corporations on the mining properties of Extension and Pilot, whereupon, defendants would and did dispose of their promotion stock by selling it on the market to the investing public, without disclosing the fact that large amounts of the funds of these corporations had been appropriated and diverted to defendants' own use and benefit; and that defendants would and did defraud purchasers of stock of Extension and Pilot by means of deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, well knowing at the time that such pretenses, representations and promises were and would be false when made, including among others, and in addition to those heretofore specified and in the manner heretofore described, representations and promises: as to the use of the net proceeds to be received from the sale of Extension and Pilot stock by these corporations; as to the names of the promoters and persons in control of these corporations; as to the fact that the promoters would hold their stock for investment; as to the accounting safeguards which would

insure the proper use of the funds of these corporations; and as to the amounts of stock issued to promoters and for legal services.

2. That on or about September 20, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according of the direction thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall Street, Spokane, Wash., said letter having theretofore on or about September 19, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

#### Count II.

(Using Mails to Defraud 18-338)

1. The grand jury realleges all of the allegations of the first count of this indictment except those contained in the last paragraph thereof.

2. That on or about June 13, 1946, at Spokane,

in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to Ben Redfield, 516 Radio Central Bldg., Spokane 8, Wash., said letter having theretofore on or about June 12, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

### Count III.

#### (Using the Mails to Defraud 18-338)

1. The grand jury realleges all of the allegations of the first count of this indictment except those contained in the last paragraph thereof.
2. That on or about May 25, 1946, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer,

for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall St., Spokane, Wash., said letter having theretofore on or about May 24, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 338, Title 18, U.S.C.A.).

#### Count IV.

##### (Fraud in Sale of a Security—15-77(q))

1. That the defendants, James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, so having devised the device, scheme and artifice to defraud described in paragraph 1 of the first count of this indictment and hereby incorporated by reference, for the purpose of and with the intent of employing said device, scheme and artifice to defraud, did, in the sale of a security by use of the United States mails, employ said device, scheme and artifice to defraud, said security and the use of the mails being described as follows:

2. The said defendants in the sale of stock of

Lucky Friday Extension Mining Company on or about August 8, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash., the said letter having theretofore on or about August 7, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

Count V.

(Fraud in Sale of a Security—15-77(q))

1. The grand jury realleges all of the allegations of paragraph 1 of Count IV of this indictment.
2. The said defendants in the sale of stock of Pilot Silver-Lead Mines, Inc. on or about May 28, 1946, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to

E. J. Gibson & Co., 5 Wall St., Spokane, Wash., the said letter having theretofore on or about May 27, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

#### Count VI.

(Fraud in Sale of a Security—15-77(q))

1. The grand jury realleges all of the allegations of paragraph 1 of Count IV of this indictment.

2. The said defendants in the sale of stock of Pilot Silver-Lead Mines, Inc. on or about June 12, 1946, at Spokane in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, did cause to be delivered by the mails of the United States according to the directions thereon, a certain letter addressed to Edwin LaVigne & Co., Radio Central Building, Spokane, Washington, the said letter having theretofore on or about June 8, 1946, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon.

All of which acts of said defendants were against

the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 77(q), Title 15, U.S.C.A.).

Count VII.  
(Conspiracy 18-88)

That prior to June 1, 1945, and continuing to the date of this indictment the defendants, James Anthony Allen, Francis Clayton Keane and Joseph Valentine Grismer, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, at Wallace, Idaho, and at divers other places to the grand jury unknown, did conspire, combine, confederate and agree with each other and with divers other persons whose identity is to the grand jurors unknown, to commit the following crimes and offenses against the United States: violations of Section 338, Title 18, U.S.C.A., of Section 77(q) of Title 15, U.S.C.A., and of Section 77(e) of Title 15, U.S.C.A., by using and intending to use the mails of the United States and means and instruments of transportation and communication in interstate commerce for the purpose of executing the device, scheme and artifice to defraud described in paragraph 1 of the first count of this indictment, which paragraph is here and now realleged, for the purpose of employing said device in the sale of securities, and for the purpose of selling and delivering after sale securities of Extension and Pilot at a time when no registration statements as required

by the Securities Act of 1933, as amended, were in effect as to such securities; and in furtherance of said conspiracy and to effect the objects thereof the defendants performed the following overt acts, among others, to-wit:

1. Caused letters dated August 8, 1945; August 13, 1945; August 23, 1945; August 30, 1945; September 12, 1945, and September 19, 1945, transmitting stock certificates of Extension to be sent through the mails from Wallace, Idaho, to E. J. Gibson & Co., 5 Wall Street, Spokane, Washington.
2. Caused letters dated August 6, 1945; August 8, 1945; August 11, 1945; August 22, 1945; August 24, 1945; August 30, 1945, and February 14, 1946, transmitting stock certificates of Extension to be sent through the mails from Wallace, Idaho, to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash.
3. Caused letters dated May 23, 1946; May 22, 1946; May 25, 1946; May 25, 1946; May 27, 1946; May 29, 1946; June 5, 1946; June 6, 1946, and June 15, 1946, transmitting stock certificates of Pilot, to be sent through the mails from Wallace, Idaho, to E. J. Gibson & Co., 5 Wall Street, Spokane, Washington.
4. Caused letters dated May 24, 1946; May 29, 1946; June 7, 1946, and June 29, 1946, transmitting stock certificates of Pilot, to be sent through the mails from Wallace, Idaho, to Edwin Lavigne & Company, Radio Central Bldg., Spokane 8, Wash.

5. In July 1945, at Spokane, Washington, caused prospectuses of Extension to be delivered to E. J. Gibson & Co. and Edwin Lavigne & Company.
6. In May 1946, at Spokane, Washington, caused prospectuses of Pilot to be delivered to E. J. Gibson & Co., Edwin Lavigne & Company, and Ben Redfield.
7. On or about July 20, 1945, at Spokane, Washington, caused Extension to enter into an Underwriter's Agreement with E. J. Gibson & Co.
8. At Wallace, Idaho, on May 22, 1946, cashed a check drawn by E. J. Gibson & Co., dated May 20, 1946, in the amount of \$40,000 and payable to the order of Pilot Silver Lead Company.
9. At Wallace, Idaho, issued 200,000 shares of Extension stock to Elmer E. Johnston with the understanding that 100,000 shares would be turned back to Johnston to defendants.
10. At Wallace, Idaho, issued 150,000 shares of Pilot stock to James E. Gyde with the understanding that 125,000 shares would be turned back by Gyde to defendants.
11. At Wallace, Idaho, and Spokane, Washington, in July 1945 and thereafter directed Irene Vermillion to draw and sign various checks against the bank account of Extension payable to Delaware Mines Corporation, Montana Leasing Company, and Lexington Silver Mines and Lexington Silver Mines, Inc.

12. At Wallace, Idaho, and Spokane, Washington, in May 1946 and thereafter instructed Irene Vermillion to draw and sign various checks against the bank account of Pilot payable to Lexington Silver Mines, Lexington Silver Mines, Inc., Independence Lead Mines, Inc., Extension, and War Eagle Mining Co.

13. Beginning in 1945 defendant Allen sold large amounts of Extension stock through accounts at E. J. Gibson & Co. of Spokane, Washington, in the names of Helen Jorgenson, Helen Allen and James A. Allen.

All of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form, force and effect of the statute in such case made and provided (Section 88, Title 18, U.S.C.A.).

A True Bill.

E. D. HILSCHER,  
Foreman.

HARVEY ERICKSON,  
United States Attorney.

Presented to the Court by the Foreman of the Grand Jury, in open Court, in the presence of the Grand Jury and filed in the United States District Court for the Eastern District of Washington.

May 6, 1948.

A. A. LaFRAMBOISE,  
Clerk.

[Title of Court and Cause.]

BOND

Know All Men by These Presents:

That we, James Anthony Allen, as Principal, and the General Casualty Company of America, as Surety, acknowledge and recognize ourselves jointly and severally bound and indebted to the United States of America in the penal sum of Two Thousand ..... Dollars, (\$2,000.00), to be levied on our goods, chattels, lands and tenements, if default be made in the condition following, to-wit:

The Condition of the Above Obligation Is Such, That Whereas, an indictment has been returned by the Grand Jury in session at the District Court of the United States, for the Eastern District of Washington, Northern Division, against the said James Anthony Allen and filed with the Clerk of the above Court, charging a violation of Title 18 USCA, Sec. 338, Using the Mails to defraud. Fraud in sale of Securities, in violation of Title 15, USCA, Sec. 77(q) and Conspiracy to violate Sec. 338, Title 18, and Sec. 77(q), Title 15, in violation of Title 18, Sec. 88 USCA.

Now, Therefore, if the said James Anthony Allen shall appear before the United States District Court for the Eastern District of Washington at 10:00 a.m. on the first day of the next ensuing session of the said Court to be held at Spokane, Washington and from day to day thereafter as he is directed so to do, and shall hold himself subject and amenable

to the orders of the said District Court until finally discharged by said Court, then this obligation to become null and void, otherwise to remain in full force and effect.

JAMES ANTHONY ALLEN,  
Principal.

GENERAL CASUALTY COM-  
PANY OF AMERICA.

[Corporate Seal]

By WILLARD G. SWEANY,  
Attorney in Fact.

Bond Approved as to Form:

HARVEY ERICKSON,  
U. S. Attorney.

Bond Approved this 6th day of May, 1948.

SAM M. DRIVER,  
Judge.

[Endorsed]: Filed May 6, 1948.

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[Title of Court and Cause.]

**BOND**

Know All Men by These Presents:

That we, James A. Allen, as Principal, and the National Automobile and Casualty Insurance Co.,

as Surety, acknowledge and recognize ourselves jointly and severally bound and indebted to the United States of America in the penal sum of Two Thousand (\$2000.00) Dollars to be levied on our chattels, lands and tenements, if default be made in the condition following, to-wit:

The Condition of the Above Obligation Is Such, That, Whereas, an indictment has been returned by the Grand Jury in session at the District Court of the United States, for the Eastern District of Wash., Northern Division, against the said James A. Allen and filed with the Clerk of the above Court, charging a violation of Title 18 USCA, Sec. 338, Using the Mails to defraud. Fraud in sale of Securities, in violation of Title 15, USCA, Sec. 77(q) and conspiracy to violate Section 338, Title 18 and Sec. 77(q) Title 15, in violation of Title 18, Sec. 88, USCA.

Now, Therefore, if the said James A. Allen shall appear before the United States District Court for the Eastern District of Washington at 10:00 a.m. on the first day of the next ensuing session of the said Court to be held at Spokane and from day to day thereafter as he is directed so to do, and shall hold himself subject and amenable to the orders of the said District Court until finally discharged by said Court, then this obligation to become null and

void, otherwise to remain in full force and effect.

This Bond is Void if in excess of \$2500.00.

This Bond is Void if issued after Aug. 5, 1949.

JAMES A. ALLEN,  
Principal.

NATIONAL AUTOMOBILE  
AND CASUALTY INSUR-  
ANCE CO.

[Corporate Seal]

By JOSEPH JOBLIN,  
Attorney in Fact.

Bond Approved as to Form:

HARVEY ERICKSON,  
U. S. Attorney.

Bond Approved this 9th day of May, 1949.

SAM M. DRIVER,  
Judge.

Filed May 9, 1949.

---

[Title of Court and Cause.]

**MOTION TO DISMISS OF DEFENDANT  
JAMES ANTHONY ALLEN**

The defendant James Anthony Allen moves the court to dismiss Count VII of the indictment herein on the following grounds:

1. That this indictment is bad for duplicity in that it charges in a single count a conspiracy to commit more than one offense; to wit, the offenses

denounced by Section 338, Title 18, U.S.C.A.; Section 77(q) of Title 15, U.S.C.A.; and Section 77(e) of Title 15, U.S.C.A.

2. That the setting up of more than one offense in a single count does not enable the court or the jury to deal intelligently with the charge, and seriously handicaps the defendant in making his defense and prevents him from properly, fairly, or legally defending; that said count does not apprise this defendant of the nature of the charge against him particularly because the charge of crime collectively included in said Count VII and being 77(e) of Title 15, U.S.C.A., is indistinct and ambiguous because no substantive charge of the violation of said statute is set out anywhere in the indictment and it is impossible in any fashion whatsoever to determine any connection with the various crimes alleged in said Count VII and the overt acts set out therein.

3. That the said Count VII of the indictment does not state facts sufficient to constitute a crime against the United States.

Lemon v. U. S., 164 Fed. 953.

R. MAX ETTER,  
WILLIAM E. CULLEN,  
Attorneys for Defendant,  
James Anthony Allen.

Copy received this 20th day of August, 1948.

HARVEY ERICKSON,  
Attorney for Plaintiff.

Filed Aug. 20, 1948.

[Title of Court and Cause.]

### MOTION FOR BILL OF PARTICULARS

Comes Now the above named defendant Francis Clayton Keane and moves this honorable court for an order directing plaintiff to file a bill of particulars of the following matters:

1. As to paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, what pretenses, representations and promises were made by defendants, and who made them, and to whom they were made, and when they were made, and whether they were oral or in writing, and wherein the same were false and fraudulent.
2. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, when and where the defendants devised and intended to devise the device, scheme and artifice.
3. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, the names and addresses of the "investors" whom plaintiff intends to use as witnesses in the trial of this action.
4. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, how much stock of Extension and Pilot were issued to Emer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, and how much of such stock or proceeds from its sale was turned

back to defendants, and what amounts to each of them.

5. As to Paragraph 1 of counts I, II, III, IV, V, VI and the first paragraph of count VII, the amount of funds of Extension and of Pilot which had been appropriated and diverted to defendants' own use and benefit, and how much thereof to each of said defendants.

6. As to Paragraph 2 of counts I, II, III, IV, V and VI, copies of letters therein described.

7. As to the first paragraph of count VII, when and where each defendant became a party to said conspiracy.

8. As to the first paragraph of count VII, the names and addresses of the persons to whom securities of Extension and Pilot were sold and delivered by defendants and the amount thereof.

9. As to Paragraphs 1, 2, 3, and 4 of count VII, copies of the letters therein described.

10. As to Paragraphs 5 and 6 of count VII, copies of the prospectuses therein mentioned.

11. As to Paragraph 7 of count VII, a copy of the Underwriter's Agreement therein mentioned.

12. As to Paragraph 9 of count VII, the amount of stock therein described received by each defendant.

13. As to Paragraph 10 of count VII, the amount of stock therein described received by each defendant.

14. As to Paragraph 11 of count VII, when defendants directed Irene Vermillion to draw and sign checks and which defendants directed her so to do, the number of said checks and the amount of each and to whom each is payable.

15. As to Paragraph 12 of count VII, when defendants directed Irene Vermillion to draw and sign checks and which defendants directed her so to do, the number of said checks and the amount of each and to whom each is payable.

16. As to Paragraph 13 of count VII, the amount of Extension stock sold by defendant Allen and when said sales were made.

The ground of this motion is that the above matters are not averred with sufficient definiteness or particularity to enable defendant to be apprised of the nature of the charges made against him or properly to prepare for trial.

Dated: August 23rd, 1948.

H. E. T. HERMAN,

RICHARD S. MUNTER,

Residing at Spokane, Wash.,  
EUGENE F. McCANN,

Residing at Wallace, Idaho,  
W. E. SULLIVAN,

W. H. LANGROISE,

Residing at Boise, Idaho,

Attorneys for Defendant,  
Francis Clayton Keane.

Filed Aug. 23, 1948.

[Title of Court.]

CLERK'S MEMORANDUMS OF  
MONDAY, AUGUST 23, 1948

Court Convened Pursuant to Adjournment,  
at 10:00 A.M.

Present: Honorable Sam M. Driver, U. S. District  
Judge; A. A. LaFramboise, Clerk; Stanley D. Taylor, Court Reporter; Harvey  
Erickson, U. S. Attorney; Frank R. Freeman, Assistant U. S. Attorney; R. R.  
Isaacs and Elwyn L. Daniel, Deputy U. S. Marshals, and Sidney G. Swain and Ray  
E. Kurtz, Probation Officers.

Proceedings

\* \* \* \*

[Title of Cause.]

HEARING ON MOTIONS AND  
ARRAIGNMENTS

Now on this 23d day of August, 1948, Motion to Dismiss of defendant James Anthony Allen, argued by R. Max Etter for the defendant and by Harvey Erickson and Donald J. Stocking for plaintiff. Motion to Dismiss Denied.

Motion to Dismiss, Motion to Strike, and Motion to Make More Definite and Certain of defendant Keane argued by Eugene F. McCann for defendant and by Harvey Erickson and Donald J. Stocking

for the plaintiff. Motions to Dismiss and to Strike Denied.

Motion to dismiss of defendant Joseph Valentine Grismer, argued by William S. Hawkins for defendant and by Harvey Erickson and Donald J. Stocking for the plaintiff. Motion to Dismiss Denied.

Mr. Etter on behalf of defendant Allen and Mr. Hawkins on behalf of defendant Grismer orally moved to make More Definite and Certain by adopting the motion of Defendant Keane to Make More Definite and Certain. Said motion as to all three defendants taken under advisement except that Mr. Erickson agreed to furnish copy of letter mentioned in the counts of the Indictment and in the overt acts.

**James Anthony Allen**

Now on this 23d day of August, 1948, into court comes the defendant James Anthony Allen with his attorney R. Max Etter, waives formal arraignment under the Indictment filed against him and being interrogated by the Court as to his plea thereto, answers that he desires to enter a plea of Not Guilty as to all counts, which plea is received by the Court and ordered entered on the records of the court.

**Francis Clayton Keane**

Now on this 23d day of August, 1948, into court comes the defendant Francis Clayton Keane with his attorney Wm. S. Langroise, waives formal arraignment under the Indictment filed against him and being interrogated by the Court as to his plea thereto, answers that he desires to enter a plea of

Not Guilty as to all counts, which plea is received by the Court and ordered entered on the records of the court.

**Joseph Valentine Grismer**

Now on this 23d day of August, 1948, into court comes the defendant Joseph Valentine Grismer with his attorney William S. Hawkins, waives formal arraignment under the Indictment filed against him, and being interrogated by the Court as to his plea thereto, answered that he desired to enter a plea of Not Guilty, which plea was received by the Court and ordered entered on the records of the court.

\* \* \* \*

(Thereupon Court adjourned until Monday, September 13, 1948, at 10 a.m.)

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[Title of Court and Cause.]

**ORDER**

This matter coming on regularly to be heard this 23rd day of August, 1948 upon the defendant's, Francis Clayton Keane, motion for Bill of Particulars, which said motion was adopted in open court by the other two defendants, and the court having heard the argument of attorneys for defendant Francis Clayton Keane and the argument presented by the attorneys for the United States, and having examined the records and files in the action

and being fully advised as to the law and in the premises;

Now Therefore, It Is Hereby Ordered and this does order that the plaintiff inform the defendant, by Bill of Particulars, what, if any, deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, other than those specifically enumerated in Paragraph 1 of Count I of the Indictment, were made by the defendant as a means of defrauding purchasers of stock of Extension and Pilot.

It Is Further Ordered and this does order that the plaintiff furnish to the defendants copies of the letters described in Paragraph 2 of Counts I, II, III, IV, V and VI and that the plaintiff furnish to the defendants copies of the letters described in Paragraphs 1, 2, 3 and 4 of Count VII of the Indictment. In all other respects said motion for a Bill of Particulars is denied.

Dated this 16th day of September, 1948.

SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed Sept. 16, 1948.

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[Title of Court and Cause.]

### BILL OF PARTICULARS

Comes now the plaintiff, United States of America, by Harvey Erickson, United States Attorney for the Eastern District of Washington, and Donald J. Stocking, Special Assistant to the United States

Attorney, and in compliance with the Court's Order of September 16, 1948, gives the following Bill of Particulars:

1. Plaintiff informs the defendants, in conformity with the first paragraph of the Court's order, that there are no deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, other than those specifically enumerated in the indictment.
2. That the attached photostatic copies of letters are furnished in compliance with the second paragraph of the Court's order and are the letters described in Counts I, II, III, IV, V, and VI and the letters described in paragraphs 1, 2, 3 and 4 of Count VII of the Indictment.

HARVEY ERICKSON,  
United States Attorney.

DON R. STOCKING,  
Special Assistant to the  
United States Attorney.

Copy received this 24th day of September, 1948.

WM. E. CULLEN,  
One of Attorneys for  
Defendant Allen.

Copy received this 24th day of September, 1948.

RICHARD S. MUNTER,  
Attorney for Defendant  
Keane.

[Endorsed]: Filed Sept. 24, 1948.

[Title of Court and Cause.]

STATEMENTS ON WITHDRAWAL OF PLEA  
OF NOT GUILTY AND SUBSTITUTION  
OF PLEAS OF NOLO CONTENDERE

(Defendant Keane)

Spokane, Washington, December 8, 1948.

Before: Honorable Sam M. Driver,  
United States District Judge.

Defendant Francis Clayton Keane appears personally and by his counsel, Richard M. Hunter and Henry E. T. Herman of Spokane, Washington, Eugene F. McCann of Wallace, Idaho, and William Langroise of Boise, Idaho.

Defendant Allen was present in the courtroom with his attorney, William Cullan of Spokane, Washington. Defendant Grismer was present in the courtroom with his attorney, Mr. Hawkins, of Coeur d'Alene, Idaho.

Mr. Herman: If Your Honor please, at this time the defendant Keane moves the Court for leave to substitute the plea of nolo contendere for the plea of not guilty heretofore entered. This, your Honor, is done for three reasons which I shall state very very briefly. First, his counsel, as officers of the court, feel that in the interests of the furtherance of justice, Mr. Keane should at the time of this trial make a full and complete disclosure without the hazard of possible conviction. In the second place, his counsel believe from information

which they think is reliable, that the physical condition of Mr. Keane at the time of the commission of the alleged offenses was such as to raise some doubt in the mind of counsel as to whether or no he was in a physical and mental condition where he could entertain the necessary intent, which is an element of the offense here charged, and for the further reason that his physical condition was such as to make it impossible for him to resist certain demands and suggestions made by others who we believe controlled his actions. In the third place, Mr. Keane's counsel believe that while Congress has vested your Honor with wide discretion in the imposition of punishment in the case of a finding of guilty or in the case of a plea of guilty or in a plea of nolo contendere, and that the punishment with which your Honor can impose is the same in all of these particular cases, whether the guilt be established by a plea, by a verdict of the jury, or whether there be no contest and the plea of nolo contendere be entered, in all those cases your Honor has a right, as I have said, to impose a very wide latitude of punishment.

On the other hand, we do not believe that Congress ever intended that the punishment for this particular crime should be so drastic as would be the punishment of disbarment, which in the case of the state of Idaho is a necessity in the event of a plea of guilty to a felony. In other words, as far as the State of Idaho is concerned, the authorities would have absolutely no alternative other than to disbar

in the event of a finding of guilt by the jury or in the event of a plea of guilty, but in the event of any action under nolo contendere it would not be, under the authorities that we have investigated and found on closer search, would not be considered as a conviction, and would in nowise affect the proceedings, and the authorities charged with determining whether or not Mr. Keane could continue with the practice of law would have a right to and it would be their duty to consider all the extenuating circumstances which would be shown if under a plea of nolo contendere Mr. Keane were to take the stand. Mr. Langroise, the chief counsel, has a statement of facts; he is more familiar with them than either Mr. Munter or I, and I think it would be helpful to your Honor if he made that statement.

The Court: Go ahead, Mr. Langroise.

Mr. Langroise: Please your Honor, it is with some degree of feeling, perhaps, the presentation I may make, because of the relationship in the past and present between myself and the defendant Mr. Keane. I merely mention that so that your Honor will perhaps bear with me in that particular. Mr. Keane and I attended law school together, and have been acquainted ever since he finished law school in 1920. I would like just to very briefly touch upon the physical condition of the defendant Keane, coming along in the early part of 1940. He was not attending to his practice of law. He was during that period using liquor excessively, and in various times which I saw him throughout that period, I found

him not able to intelligently and in some instances to at all discuss any matter with any degree of continuity or reason.

This condition continued along on and on until in the end of—even into 1947. Along after, or after we got into this matter, Mr. Keane was taken to a hospital for examination, and it was found then that it was not entirely a habit of whiskey that had brought about his condition, but the doctors further found and reported to us that it was a result, in part, of malnutrition. Since he went to the hospital and has taken the treatments which the doctors have prescribed to try to build back his physical condition, there has been a great change, and there has been a complete rehabilitation, and since that time he is able to carry on and engage in the practice of law as we knew him throughout the many years in which many of us at the bar of Idaho had the pleasure either to be associated with him or to be opposed against him in cases that were being tried.

Along in 1943, somewhere along in the summer of that year, this defendant together with the defendant Allen entered into some type of partnership, which in its first instance had to do with what I think is commonly referred to as the Montana Leasing Company, a property over in Montana which they attempted to operate and attempted to finance. During the course of that operation, and I say again, during all of this time, from some things which I saw myself and some things which I have found from others who I have a great deal of confi-

dence in, Keane was continuing his drinking and was in substantially the same condition which I have described; he had no way of being able to do anything, but during the course of this there were two properties or promotions, and these two promotions, as a result of them there were certain promotions of stock received by the partnership, and certain of those promotion stocks were sold and the funds, some of which went into the Montana Leasing Company, others of which we have never been able to discern or find where they went.

At any rate, carrying it on into the time this investigation was made and after we were able to get Mr. Keane in the condition where we could talk to him, we found these facts, and Keane immediately then started to pursue a course of trying to secure for the benefit of these companies and the creditors of this partnership any assets which the partnership had. In June of 1947 a suit was filed by Mr. Keane against Mr. Allen and others, setting up all of these various transactions as best they could be set up, and for the purpose of trying to marshal whatever assets the partnership had or was entitled to, for the purpose of making repayment of monies borrowed from these various companies, and set up the various contributions as best he could, and set up that the various funds had come out, and Allen owed to the partnership, and seeking recovery, and asking for a receivership for the purpose of marshaling these assets and trying to get them together so it would be possible to make restitution of the borrowed money from these various companies.

On this a notice was had for hearing on the application and petition for appointment of a receiver. There was a continuance, one, I believe, and two, but as a result of it, there was a conference between attorneys representing Mr. Allen and the attorneys representing Mr. Keane. From an examination of these pleadings, and I'm referring to what are matters of court record in Idaho, and I have copies if your care to have them, Keane set up that all of the monies he had had been contributed to this partnership, and all the stock that he had was about 200,000 shares of Pilot, that was all he had, that he had no assets and had none of the funds. Well, as a result of that conference and a number of conferences, an agreement was entered into between Mr. Keane and Mr. Allen. One of the things was—and also a settlement with Independence for monies due Independence. The stocks which went in to make this settlement came from Allen. Keane had none, and had had none, and I think the complaint shows that in the last of 1946 that all of the books, records, and corporate records, and the control of all these corporations, was taken over by Allen and his associates.

In this agreement it was agreed that Keane would contribute this 100,000 shares of Pilot that he had in his possession, and that it was to go into a trust. A good many hundreds of thousands of other shares of stock was to go into this trust. This trust was set up for the purpose of liquidating the obligations of the Pilot and the Lucky Friday Extension; The

trustees, Mr. Therrett Towles of this city, Mr. Eugene McCann, and Mr. Randall, an accountant, a C.P.A., of Wallace. Certain things were to be done, and as a result of that there have been numerous suits filed involving different companies, different things; they were to be dismissed; all of those suits were to be dismissed. They were dismissed, including the one Keane brought in June, 1947, upon certain representations that certain funds would be available for making restitution or returning capital, and so forth, so that they could continue the operations of and complete restitution or return of the money be made to these properties. Also representations were made as to a certain set of conditions as to the brokers' contracts with brokers and others whereby money was to be obtained for the development of these various other companies, including the Coeur d'Alene Mines Consolidated, which was considered a very promising company; they had a contract with the Coeur d'Alene Mines for development of some four different groups of properties at the 2700 foot level.

None of these monies that Allen said would be put in, or any of the listing of the stocks or the registrations or the brokerage of them or anything else was done. It continued on and it was left just in its status quo, and some of the stocks in the Pilot and in the Lucky Friday Extension that were in the treasury were removed from the treasury, so it was alleged in our subsequent motion and affidavit in support of it, by Mr. Allen, and put on the market

until all of the stocks were a dredge on the market; there was no chance for the trust to do anything, so along in April, 1948, Mr. Keane made a motion to set aside the judgment of dismissal that had heretofore been entered in the action which had originally been instituted in June, 1947, and in support of that motion, set up in the affidavit various things as to the failure of this and other things which were fraud, as we saw it. This motion was set down for hearing, was heard, and was by the District Court of Shoshone County granted, and was by the defendant Allen and others appealed to the Supreme Court of Idaho, where it is now pending.

I merely mention this, if your Honor please, for the purpose of indicating to you that anything that has been done or any effort that has been made to accomplish any return of the monies borrowed from these various companies has been the result of the actions of the defendant Keane; that he and he alone has been forcing and is still trying to force an accomplishment of that fact. I think, if your Honor please, if you care to examine, I have attached all of these papers, the ones I have referred to, which will give a pretty clear picture of those things during that period.

The Court: I don't care to see them. Mr. Erickson.

Mr. Erickson: Please the Court, I do not wish to urge the Court to accept or to reject a plea of nolo contendere. I take it that that's the decision that the Court must make. I wish to join in what

Mr. Langroise has said about Mr. Keane's cooperation. Mr. Keane came into the grand jury room and told a story which I thought was straightforward and above board, to the grand jurors. He's done, I'll grant that he's done, everything he can within the past year, or whenever it is, to make restitution, but I do think that I should tell the Court some of the more serious aspects of this case.

In the first place, this started in 1945 by the organization of the Lucky Friday Extension Mining Company in Idaho. It was a mining proposition in the Coeur d'Alene mining district. Now, it happens that the defendant Allen was enjoined in 1943 and could not be a promoter and no securities could be sold of any company of which he was an officer. The prospectus of the Lucky Friday Extension Mining Company listed the promoters as Grismer, who is a defendant in this case, and William Ellsworth Mullan, and Evans. The evidence will show that Mullan and Evans were merely dummy incorporators for Keane and Allen. Keane and Allen were the real people behind this Lucky Friday Extension Mining Company. They issued 350,000 shares, at 10 cents par value, and there was a public offering made to the brokers. The total receipts were \$178,000, and Keane and Allen embezzled \$123,000 of that amount. The embezzlements were crude and flagrant, and one of the most notorious cases of embezzlement that's ever come to my attention. They took this money and diverted it and

used it for drinking, for gambling. We have personal checks that they cashed at hotels, one check is made out \$600.00 and some dollars to a jitterbug, signed in feminine handwriting; and some of it was used in other Montana mines that these people had interests in. \$28,250.00 was restored, and \$94,750.00 is the net amount of the embezzlement which hasn't been restored at this time.

The Court: How much was restored, did you say?

Mr. Erickson: \$28,250.00, so there's a shortage of \$94,750.00, is the net amount of the embezzlement on that case.

Now, to make matters worse, there was a bull market in mining stocks about the latter part of 1945 and the early part of 1946, so there was a second offering made to the public through brokers of 300,000 shares, and that time they raised the price from  $12\frac{1}{2}$  to  $32\frac{1}{2}$  cents per share, and there was such a market on that the public went for the second issue, and the brokers couldn't get enough, but when the second offering was made Keane and Allen and Grismer knew that they had already embezzled most of the money they got the first time from brokers, but they didn't disclose that, and went right on increasing their operations on the second offering.

Then they came in spring of 1946 to Pilot Silver Lead, which was the other company, and this company was organized by Keane, Allen and Grismer. Keane became president and Grismer the

manager, and Allen did not appear of record. He couldn't, because he had been enjoined, and the same proposition prevailed here. 3,500,000 shares were issued at 10 cents par value, and then they were given stock for legal services in both of these companies, to James Gide and to Elmer Johnston, 200,000 shares for legal service, 150,000 to James Gide, of which most of that was kicked back, and then the stock to Elmer Johnston was kicked back by Elmer Johnston back to the company. Mr. Stocking can give you the exact shares on those kickbacks, but they were a fraud on the public, because the prospectus didn't disclose accurately the amount of stock that was going for attorney's fees, and out of the stock on Pilot Silver Lead there were \$213,500.00 realized, and the net embezzlement on that was \$75,335.00; \$15,165.00 was restored, so that the total embezzlements by these defendants was \$213,500.00, of which \$170,085.00 is still owing and of which restitution has not been made, and that in fact is the brief picture here of the amount involved, and the public, of course, were the victims, and I'm presenting these facts as near as I can, and Mr. Stocking, who has the details, can elaborate more on them.

The Court: Mr. Stocking.

Mr. Stocking: If the Court please, Mr. Erickson has given the outline of the general fraud that's alleged in this indictment. As the Court knows, there's three counts in the indictment based upon a charge of mail fraud, upon a charge of fraud in

the sale of these securities, and one upon a charge of conspiring to violate both the mail fraud and the fraud section of the Securities Act, and also a charge of conspiracy to violate the registration provisions of the Securities Act, and that comes in connection with the Allen injunction which Mr. Erickson mentioned. It did not prevent the sale of Securities in which Mr. Allen would be a promoter if they had gone through registration, but there was a three year limitation against an offering coming within the Class A registration. That injunction took place in Seattle in June, 1943. Both of these offerings were commenced before June of 1946, so they were both in that three year period, and that was one reason, and the government's contention, that Allen's name does not appear in either of these prospectuses. These were sold out by legitimate brokers, these offerings, in a legitimate operation, and the fraud, of course, comes in the fact that they didn't use the money as they said they were going to use it for the benefit of these companies.

In the first offering, out of the \$178,000.00 that Extension got from its two offerings, one in June, 1945 and one in January, 1946, approximately \$80,000.00 was used in connection with the corporation's legitimate activities. The Extension Company had entered into a contract with what we refer to as the Big Friday, it's the Lucky Friday Mining Company, and it's a well established mining company there near Mullan. Its ground adjoins this of the Lucky Friday Extension. The arrangement had

been made for the Extension to put up money and sink farther on their shaft, and then go from their workings over into the Extension grounds. Joe Grismer was in charge of the operation up there, and this \$80,000.00 was spent under his direction in attempting to do this mining, but as he pointed out, as Mr. Erickson pointed out, at the time they made the second offering, and after they had made this showing and the public knew that they were actually sinking the shaft and coming along with that work, and the stock had jumped up to a market of around 30 cents a share, then they came out with this offering of  $32\frac{1}{2}$  cents a share, and at that time the figures show that they had already diverted out of this first \$100,000 they had received from the brokers, \$49,000 to their Montana Leasing Company, \$10,000 to the Delaware Mining Company, which was a corporation which all three of these defendants were interested in, and only \$29,000 had actually been spent at that point on the work in the Big Friday mine. At the end of the year of 1945 that figure of diversion was \$42,000.00. The actual offering came about January 7, 1946, and by that time they had diverted an additional \$7,000.00.

The Pilot Company then was formed, and the diversion there took place much faster. The money came in almost immediately from the underwriters, and by September 12 of 1946, you see the offer was made at the end of May, 1946; the money came in the first part of June, 1946; by September 12, 1946, they actually had a small deficit in the Pilot bank

account, and in the first three months they had taken out for their own purposes to divert to these companies in which they were interested, and in which Pilot had no interest, of course, 94 or \$95,000 of the original \$100,000.00. Some of this money then, as Mr. Erickson has pointed out, they put back into the Pilot company, and some of the money they put back into the Extension Company to meet the payrolls and keep the companies going, but the thing blew up on them about November, 1946, when they ran out of money in both the Pilot and the Extension, and they had no way to carry on any kind of mining operations, so that the net result to the stockholders, of course, was that they had lost all of their money. They still have these properties up there, and we're not contending anything about the merits or demerits of these properties. From what we've been told, both of these propositions had merit, and if the money had gone into them they may have proved very successful.

Now, the defendant Keane had told us that at the outset, when these monies were coming in from the Extension and were taken from the Extension for the use of the Montana Leasing Company, which he claims is a partnership between Keane and Allen, that they intended through the sale of their promotion stock to put this money back. They were taking quite large amounts of promotion stock, most of it in the name of defendant Grismer, and they intended through the sale of that promotion stock to pay, to repay these loans, if you want to call them

loans, or these diversions, but the fact is that very little of the money that came from the sale of the promotion stock ever found its way back into these two companies, and it just became a case of their running short of money and having to promote the Pilot to continue operations, then they gave some of the Pilot Money to Extension.

The diversions were as follows: From Extension, \$113,000 to the Montana Leasing Company or Lexington Silver Lead Mines, Inc., its successor, those diversions taking place between July 28, 1945, and May 17, 1946; from Extension, \$10,000.00 to Delaware Mines Corporation on August 7, 1945. That takes care of the diversions from Extension. From Pilot, \$61,300.00 to the Lexington Silver Lead Mines, Inc., which was the successor of their Montana Leasing Company; \$15,000.00 to Coeur d'Alene Consolidated Silver-Lead Mines, Inc.:—

The Court: Mr. Stocking, unless you wish to do so, it isn't necessary to go into detail on these diversions, if you just want to tell me the totals of them.

Mr. Stocking: Well, I think the totals have already been related. \$178,000.00 was the total taken in by Extension, and the total diversions from Pilot and Extension amounted to \$213,500. of which \$170,085.00 is still owing. The only other things that I thought I might mention here to the Court for consideration at this time would be the fact that Keane has cooperated with the government, as Mr. Erickson has stated. Now, in connection with that

cooperation it should be pointed out that the government's case in this is built up very largely on paper records, checks, bank statements, and things such as that. All of these records were in Keane's hands at the time our investigation started, and eventually all of these records have been turned over to the government. I make that point because it has been our experience in some cases where vital records have been destroyed, and of course when a case is based on records, why, it affects the government's ability to prove a case beyond reasonable doubt to the satisfaction of the jury. Keane has made those records available to the government. The only other thing that I might mention would be that I have found out in talking to people in the vicinity of Wallace and Kellogg and Northern Idaho that the defendant Keane is very well thought of in his community. He has practiced law up there for some time, and has borne a good reputation. He's had no other convictions or difficulty.

The Court: I was just going to ask that question; I had assumed it was true that he has no prior, at least felony convictions.

Mr. Stocking: That is correct. I don't know of any other information. If there's any breakdown of any of these figures that are required, we have Mr. Denny, the Commission's accountant, here, and he'll be able to outline the charge.

The Court: I think that's sufficient information so far as the circumstances of the case are concerned. Anything further?

Mr. Munter: I might just add, as an officer of

this Court, and representing the defendant Keane, that I have personally had an acquaintance with Mr. Keane for more than fifteen years, have been associated in causes with him in both the state courts here and in Idaho and in the Federal courts, and I think what Mr. Stocking has just said is entirely true, he does have the respect and regard of the community in which he lives.

It seems to me the problem before your Honor this morning presented by our request for permission to change plea goes to the question of whether the circumstances here, taking into consideration the matters which the government counsel have so fairly presented to your Honor and the circumstances of this particular defendant of being a practicing lawyer, unfamiliar with any other avocation or vocation of any kind, if such a plea is permitted by your Honor the effect of it, of course, will not be to in any way limit the punishment which your Honor can give to the defendant under such a plea. The understanding of all counsel, and I think that is your Honor's opinion of the law, is that the Court would then be free to in other words give such penalty as the Court saw fit within the same limits that the Court would be limited by a plea of guilty or a conviction.

It seems to me that the matter which is now presented to your Honor then goes solely to the question of whether under these circumstances and the frankness and the honorableness of this man, which immediately showed itself once he got from

under the curse of this condition of habitual drunkenness, that his character immediately showed in his placing at the disposal of the government these records, rather than that of the mind which is actually criminal, which would naturally destroy and do away with and perhaps have made even impossible successful prosecution here, and then the further matters which my associate, Mr. Langroise, brought to your Honor's attention of the genuine bona fide effort which is requiring time and substance of Mr. Keane to carry on this litigation which is now in the Supreme Court of Idaho to attempt to secure restitution here from the ones he thinks are in a position to make restitution of the things which were taken, because it's perfectly obvious to your Honor that while there's been a suggestion here of amounts used for cashing checks at various hotels and things of that kind, that this money hasn't all been lost. It's just as evident that it is not within the power of Mr. Keane to make restitution unless he can secure that money from the places where it now is, and he has carried on that litigation for that purpose.

It seems to we who are addressing this motion which is addressed to the discretion of the Court, that here is presented a case where, as in the case of any professional man, there would automatically follow a punishment far greater than the Congress itself has established for the offense under circumstances where a man who has heretofore conducted himself now finds himself in middle age and without

any means of livelihood other than his profession; that he is addressing himself to the Court for the purpose of being able to continue at such time as he has paid such penalties as your Honor might inflict in his professional career, subject only to meeting the question of whether he actually has been guilty of moral turpitude to such an extent that he should not be allowed to continue, and a conviction here automatically, either upon a plea of guilty or a finding of the jury, would remove from him that possibility of showing the circumstances of the case, therefore we respectfully submit to your Honor that under the showing here made, this plea should be entertained by your Honor.

The Court: It's been the practice of this Court and I think of most Courts to limit the rather exceptional and extraordinary plea of nolo contendere to those cases involving corporations or a violation of regulatory laws, where there isn't the matter of moral turpitude involved, but obviously it wasn't the intent of Congress to strictly limit the acceptance of the plea to those cases, because it hasn't been limited by legislation, and the Court has in its discretion in this particular case to accept or reject the plea when it is proper.

As Mr. Munter has pointed out, this hearing has nothing to do with the punishment that may finally be imposed upon the defendant Krane should the plea be accepted. As he's stated, it's the understanding of the Court that upon the acceptance of the plea and the finding of guilty upon the facts as presented, the Court may then impose an

identical punishment on the same authority and may act within the same limitation as after a verdict of a jury or a plea of guilty, so that here it's just a question now of whether the plea should be accepted.

I think it should be sparingly employed, and I want to say that I would not consider it in a case of this kind where there are not exceptional circumstances presented, but here, without detailing the circumstances which have been stated this morning, we have a lawyer, a member of a learned profession, who has reached middle age, fifty years of age, I understand, with a good reputation and no prior conviction. During the time of the commission of the offense charged he was drinking heavily and continuously, and if he should plead guilty or be found guilty, as I understand the laws of Idaho, his disbarment would follow necessarily as a result of that conviction, whereas if a plea of nolo contendere is accepted, then the matter of whether or not he shall be disbarred rests within the discretion of the Board of Bar Examiners or whatever agency passes on that matter in the state of Idaho, and they may or may not disbar him, depending upon the circumstances of his offense as they may be presented, so that just to put it baldly and shortly, I think that under these circumstances the man is entitled to a chance to avoid disbarment if he can, and as has been intimated here, the disbarment of a professional man of his age just practically destroys the individual so far as his usefulness to

society is concerned, and I want to say that it's not because this man is a lawyer, but because he's a professional man, that I'm inclined to accept this plea. I would regard it in the same way under similar circumstances if a dentist or a physician or a member of any learned profession were involved where the depriving of the right to continue practicing his profession would have such a disastrous effect.

The court will grant the motion for leave to change the plea of the defendant Francis Clayton Keane from not guilty to nolo contendere. Now, what was your plan, gentlemen, with reference to entering formally the plea of nolo contendere? The court has merely indicated he would accept it.

Mr. Herman: With your Honor's permission, the defendant Keane is present in court, and will proceed so to do.

The Court: All right.

Mr. Herman: We will waive the reading of the indictment.

The Court: You're familiar with the various counts of the indictment, Mr. Keane?

Defendant Keane: I am, your Honor.

The Court: And being an attorney, I deem it unnecessary to explain to you further than I have already done, the matter of the effect of the plea of nolo contendere. You understand that?

Defendant Keane: I understand, your Honor.

The Court: And what, then, is your plea to this indictment?

Defendant Keane: Nolo contendere.

The Court: To each of the seven counts of the indictment?

Defendant Keane: Yes, to all of the counts of the indictment.

The Court: I think that the Court indicated he would permit withdrawal; I think I should formally find that you have withdrawn your prior plea of not guilty.

Defendant Keane: Yes.

The Court: And that you now substitute therefor a plea of nolo contendere to each of the counts of the indictment.

Defendant Keane: That's correct.

The Court: Let the record so show. The Court thinks it would be advisable to defer sentence in this case until after the trial of the case in order that I may get the benefit of the disclosures made in the presentation of the testimony, and in the meantime I will ask the probation officer to prepare for me a presentence investigation and report, and make a report to the court. Is there anything further, then? The court will adjourn until Friday morning at 10 o'clock.

#### Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the duly appointed, qualified and acting official court reporter of the United States Dis-

trict Court, Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings had before the Honorable Sam M. Driver, United States District Judge, at Spokane, Washington, on December 8, 1948.

That the within and foregoing is a true, accurate and complete transcript of the proceedings had therein.

Dated this 9th day of December, 1948.

STANLEY D. TAYLOR,  
Official Court Reporter.

[Endorsed]. Filed Dec. 10, 1948.

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[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA  
OF NOT GUILTY AND SUBSTITUTION  
OF PLEA OF NOLO CONTENDERE.

(Defendant Grismer.)

Spokane, Washington, January 12, 1949.

Honorable Sam M. Driver, United States District  
Judge.

Harvey Erickson, United States Attorney, and  
Frank R. Freeman, Assistant United States  
Attorney, appearing for the plaintiff.

William S. Hawkins, appearing for the defendant  
Grismer.

Mr. Hawkins: Your Honor please, the defend-

ant would like at this time to ask permission of the Court to withdraw his plea of not guilty to the counts which are on file here, and tender a plea of nolo contendere to the conspiracy count.

The Court: Very well. Mr. Erickson?

Mr. Erickson: If it please the Court, if a plea of nolo contendere is tendered to count 7, I wish after a brief statement of the case, if the Court should accept the plea of nolo contendere on count 7, to dismiss counts 1 to 6 inclusive.

The Court: Count 7 is the conspiracy count, and counts 1 to 6 inclusive are the substantive counts, isn't that correct?

Mr. Erickson: Yes, but the dismissal only as to the defendant Grismer on the other counts.

The Court: Yes, I understand that. I might say for the record here that this matter has been discussed in chambers in a conference in which counsel for the defendant and the government were present, and the representatives of the Securities and Exchange Commission, and the matter was discussed in considerable detail, so that you need only briefly state your reasons here, Mr. Erickson, for making this motion.

Mr. Erickson: I make this motion to give the Court some of the facts in connection with Grismer's participation, just very briefly. In the first place, in the first company that was promoted, the Lucky Friday Extension Mining Company, Grismer was the president of the company, and his only compensation was a salary of \$200.00 per month. He never participated, he never got anything except his sal-

ary; of all the monies that were raised for this company he only received a salary. As to the second company, the Pilot Extension, he was the foreman in charge of the operations there; he put up the mining claims, and he only was compensated for his actual work there, and they still owe him some salary for the work he did on the Pilot Silver.

The Court: Well, it's my understanding that he rendered service for whatever pay he got, or salary.

Mr. Erickson: Yes, he was actually on the job and rendered services for that. He had owned these mining claims for a period of years, and deeded these mining claims to the company, so that he's out his mining claims in addition to his salary, and of the some \$214,000 that was raised in all by these promoters, there's still about \$170,000 owing; Grismer never got any of this money; the only money he got was to meet his payrolls, and he actually paid out to the men what he got for that purpose, in addition to his own salary, of course, so that he did not profit. His name was used by the others in order to put the promotion over. He appeared prominently in the prospectus. His conduct was more of negligence or carelessness than anything else, because of the fact that he would sign reports without reading, he would sign reports in blank and give them to them to fill out, which later were filled out and contained false information, and sent to state officials and authorities about the conditions of these mines and the finances, and I have

those brief statements to make. I will say further that it is my belief that he's an uneducated man, that he's a practical miner; he knows how to drive a tunnel and sink a shaft, but he doesn't know anything and never did pretend to know anything about business and financing a mining company.

The Court: Mr. Stocking?

Mr. Stocking: I might add the thought there, I'm not sure it was expressed by Mr. Erickson, that from our investigation during the period that these crimes were alleged to have been committed, the defendant Grismer was under the domination of the defendants Allen and Keane, and that was of course illustrated by his signing these documents and allowing promotion stock to be issued in his name, and then signing the blank stock certificates and turning them back to these other promoters. I think he has a very little part of the stock left that was issued to him; most of it was either taken back by the promoters, or given by him to his associates who owned these mining claims with him.

The Court: All right, Mr. Hawkins.

Mr. Hawkins: Your Honor please, in view of our conference in chambers and the statements made by the United States Attorney and Mr. Stocking of the S.E.C., I don't think it will be necessary for me to make any particular further argument for the purpose of accepting the *nolo contendere*.

The Court: No, I think not.

Mr. Hawkins: I have my client with me, and I'm willing to have him stand and advise the Court whether he is willing to proceed as outlined.

The Court: Are you somewhat hard of hearing, Mr. Grismer?

Mr. Grismer: Yes, your Honor.

The Court: You understand that your attorney has requested permission for you to withdraw your plea of not guilty to this indictment, and enter a plea of nolo contendere to count 7 of the indictment?

Mr. Grismer: I understand that.

The Court: Is that what you wish to do?

Mr. Grismer: I understand that.

Mr. Hawkins: You understand the other six are to be dismissed?

Mr. Grismer: Yes.

The Court: Yes. Very well, the plea of not guilty as to count 7 of the indictment will be withdrawn, and what do you say now to count 7, what plea do you enter to count 7?

Mr. Grismer: Nolo contendere.

The Court: Very well, the plea of nolo contendere will be accepted, and the record may show that it is entered, and upon the motion of the United States Attorney counts 1 to 6 inclusive of the indictment will be dismissed as to the defendant Grismer only, or rather, I should state more accurately, perhaps, that the defendant Grismer will be dismissed from these counts 1 to 6, and they will stand as to the other defendants; and I think that I should have a pre-sentence investigation of the background of this defendant, so I'll refer the matter to the probation officer for a pre-sentence investigation, and defer sentence until after I receive it, and Mr.

Grismer may remain out on whatever bond he has here pending the hearing on sentence. It might be well, Mr. Hawkins, if you'd take Mr. Grismer around to Mr. Swain's office so that they can know where he is, and get such information as they might want. They might want to talk to him a while today. The court will adjourn.

#### Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eatsern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the above entitled court, held on January 12, 1949, at Spokane, Washington.

That the above and foregoing contains a full, true, and correct transcript of the proceedings had therein.

STANLEY D. TAYLOR,  
Official Court Reporter.

Dated this 31st day of January, 1949.

[Endorsed]: Filed Jan. 31, 1949.

[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA  
OF NOT GUILTY AND SUBSTITUTION  
OF PLEA OF NOLO CONTENDERE.

(Defendant Allen.)

Spokane, Washington, January 13, 1949.

Honorable Sam M. Driver, United States District  
Judge.

Harvey Erickson, United States Attorney appear-  
ing for plaintiff.

R. Max Etter, appearing for the defendant Allen.

Mr. Erickson: Mr. Etter, who represents Mr. Allen in this case, indicates that he desires to withdraw his plea of not guilty and enter a plea of nolo contendere to the first six counts of the indictment. If that is done the government will move to dismiss the seventh count, which is the conspiracy count, if the Court entertains the plea on the first six counts of the indictment.

The Court: I was just wondering, here, we may be getting into a queer situation. Keane's plea, as I remember it, of nolo contendere was to all of the counts, wasn't it?

Mr. Erickson: Yes.

The Court: And Grismer's was only as to the conspiracy count?

Mr. Erickson: That's right.

The Court: Now, if we dismiss the conspiracy

count to Allen, we've got Keane in deeper than Allen.

Mr. Erickson: Well, that's right. I'll move to dismiss count 6 instead of 7, then. We can dismiss that as to Keane, then, too.

The Court: Yes; I'd rather have them on the same basis. I think that's fair. Whichever one is dismissed, dismiss as to Keane too.

Mr. Erickson: All right. Instead of count 7, I'll move to dismiss count 6 as to both Mr. Allen and Mr. Keane.

The Court: Very well, the motion will be granted, and I think the record may show that a conference has been held in chambers regarding this matter just prior to this session, in which counsel for the defendant and the United States Attorney were present, so it isn't necessary for you to repeat here in detail, Mr. Etter, your reasons for submitting this plea. Is Mr. Allen here?

Mr. Allen: Yes.

The Court: Do you understand what has taken place here, Mr. Allen?

Mr. Allen: Yes, your Honor.

The Court: And is it your desire that you be permitted to withdraw your plea of not guilty, and substitute a plea of nolo contendere?

Mr. Allen: Yes, sir.

The Court: To the remaining counts of the indictment?

Mr. Allen: Yes, sir.

The Court: Very well, you will be permitted to do that, you may withdraw your plea. The record may show that the plea of not guilty has been withdrawn. What do you say now to counts 1 to 5, and count 7, of this indictment?

Mr. Allen: Nolo contendere, your Honor.

The Court: Do you confirm that, Mr. Etter?

Mr. Etter: Yes, your Honor.

The Court: Very well, the plea will be received, and the court will direct that a pre-sentence investigation be made in this case, as in the case of the other defendants, and the matter will be set down for hearing when the case is complete. Will you notify Mr. Swain, then, that he is to make a pre-sentence investigation in this case. Court will adjourn until tomorrow morning at 10 o'clock.

#### Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the above entitled Court, held on January 13, 1949, at Spokane, Washington.

That the above and foregoing contains a full,

true and correct transcript of the proceedings had therein.

Dated this 31st day of January, 1949.

STANLEY D. TAYLOR,  
Official Court Reporter.

[Endorsed]: Filed Jan. 31, 1949.

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[Title of Court and Cause.]

PROCEEDINGS ON WITHDRAWAL OF PLEA  
OF NOLO CONTENDERE AND SUBSTITUTION OF PLEA OF NOT GUILTY

(Defendant Allen)

Be It Remembered, that the above entitled matter came on before the Honorable Sam M. Driver, Judge of the above entitled Court, at Spokane, Washington, on Monday, the 21st day of March, 1949, the plaintiff appearing by Mr. Harvey Erickson, United States Attorney for the Eastern District of Washington, and Mr. Donald R. Stocking, attorney for the Securities and Exchange Commission; the defendants appearing in person and by their counsel, as follows: For the defendant Allen, Mr. R. Max Etter, Mr. J. F. Emigh, and Mr. W. D. Murray; for the defendant Keane, Mr. William Langroise, Mr. R. S. Hunter, and Mr. H. E. T. Herman; for the defendant Grismer, Mr. William S. Hawkins; Whereupon, the following proceedings were had and done, to-wit:

Mr. Etter: Your Honor, with the Court's permission I'd like to move specially for the admission in this particular case of a firm that's been asso-

ciated, members of the Montana bar, Mr. J. F. Emigh and Mr. W. D. Murray.

The Court: They may be permitted to participate in this matter without being admitted to the bar of the court; that's what they wish?

Mr. Etter: Yes, sir, not having sufficient time to apply.

The Court: Now, I've just checked the records of the Clerk, and according to my information, I wish you would check me on this, the defendant Allen has entered pleas of nolo contendere to counts 1, 2, 3, 4, 5 and 7; the defendant Keane has entered *please* of nolo contendere to each of those counts, that is, all of the counts except 6, the defendant Grismer has entered a plea of nolo contendere to count 7 only, and the counts on which the defendants have not entered pleas of nolo contendere have been dismissed. Is that correct? The matter comes up now for sentence. I might say that the Court has had the benefit of a pre-sentence investigation report prepared by the probation officer as to each of these three defendants. With that in mind I'll hear what the United States Attorney and the Securities & Exchange Commission attorneys have to say, and then the attorneys for the defendants. You might take them in the order in which they're named, Allen, Keane and Grismer.

Mr. Emigh: May it please the Court, I want to apologize to the Court at this time because Mr. Murray and I have not been able to devote the time we should to familiarize ourselves with this case.

At the present time, your Honor, in my mind and also the mind of Mr. Murray there is a condition of uncertainty, and the exact status of this case is obscure in some respects. At common law and under many of the decisions a plea of nolo contendere is accepted only where there is a violation of a regulatory statute or regulation of an administrative body authorized by law to make such a regulation, and ordinarily at common law and under a great many of the decisions the plea is accepted only when the act is punishable in the alternative by fine or imprisonment and when it is deemed that the punishment by fine is sufficient. In this case, in view of the number of things that have transpired in this case, and particularly a circumstance when the defendant Allen through his counsel proposed to lay before the S.E.C. and the probation officer, or whoever required them, his facts as to defense, and that Mr. Etter of counsel depended upon that being done, I believe, at the time the plea of nolo contendere was entered, and we have not been able to exactly understand whether at this time we might feel that the common law rule would be applied in this case, the plea of nolo contendere having been permitted, or whether the later rule, which seems to be the prevailing rule in the 9th Circuit, would apply, that the Court would after hearing all matters determine whether a jail sentence would be imposed, or a fine only. In other words, if we are approaching this case as a regulatory violation with the thought

that a fine only would be the outcome, we would have one feeling on it, and if we felt that it was a hearing where the matter would be considered as on a plea of guilty or conviction, so far as punishment is concerned, we might have another feeling on it, and because counsel is not too clear on that, and because Mr. Murray and I haven't ridden through with the case, I beg to be advised on that before we proceed further, if I might.

The Court: Yes, I think you're entitled to know what the court's view on that is. The first application for permission to submit a plea of nolo contendere was made by the defendant Keane, and after some discussion in chambers, in which the government and the defendant were represented, the Court was careful to point out that it was his thought that if a plea of nolo contendere were accepted, that the Court would then have the authority to impose any punishment up to the full maximum provided by the statute, and that the Court at that stage did not know the circumstances and wasn't in a position to determine what punishment should be imposed, and that was a matter that would have to be fully reserved, and I attempted to and I think did make that clear to counsel for the defendant Keane. Then I think that later, at the instance or I believe on the request of the United States Attorney or the government attorneys, a plea of nolo contendere was accepted for the defendant Grismer on the ground that his part in the whole transaction was a minor one, and that he was rather, to use a popular expression, a "cat's

paw" of one or more of the other defendants, and the Court accepted a plea of nolo contendere from the defendant Grismer, and then the defendant Allen came in by counsel, and I thought made the logical contention that he shouldn't be by implication singled out as the one villain of the piece here, and that if the others were permitted to enter a plea of nolo contendere he should do so also, and I think there was a suggestion made at that time that he would like at that time, or wished to have a conference in which he'd present his side of it, and have the defendant Keane present his case to the probation officer, and thrash the whole thing out, and that seemed to be acceptable at that time. On further thought it seemed to me that was not the proper way to proceed here, that we shouldn't have an informal hearing of the matter before the probation officer, I could see where there might be difficulties and that that wasn't desirable, and we decided that that should not be done.

Now, it seems to me that so far as the law applicable is concerned, there shouldn't be very much doubt. The case of *United States vs. Hudson*, 272 U. S. 451, is squarely in point as to the authority of the court to impose penitentiary or imprisonment as a part of the sentence upon a plea of nolo contendere, and that, by the way, was a case in which a plea of nolo contendere was entered to several counts of an indictment charging use of the mails to defraud, a fraud case the same as this one, and the court there reviews and calls attention to

the common law rule, and some uncertainty as to what the rule was, and comes to the conclusion that the court does have authority to impose confinement or imprisonment on a plea of nolo contendere. I think the last paragraph is rather significant in this, bearing upon perhaps the situation in this case.

"Undoubtedly a court may, in its discretion, mitigate the punishment on a plea of nolo contendere and feel constrained to do so whenever the plea is accepted with the understanding that only a fine is to be imposed. But such a restriction made mandatory upon the court by positive rule of law would only hamper its discretion and curtail the utility of the plea."

Now, it isn't my understanding that there was any condition imposed here as to any of these defendants that the Court was restricted to imposition of a fine in case the plea were accepted, and I don't mean by that that the Court at this time has decided either to impose or not to impose imprisonment. That's a matter on which I am reserving judgment until I fully hear the matter and everything that is to be presented. However, one of the reasons that I thought it wasn't wise to have this hearing that Mr. Eetter suggested, there have been quite a number of conferences in this case, and I suppose there is room for misunderstanding, these presentence investigation reports are not disclosed to anybody except the probation officer and the Judge, and I didn't want to disclose them and I

haven't done so to the attorneys for the S. E. C. or the United States Attorney; I wanted to be in a position where if something developed which seems to be developing now, where any of these defendants come in and claim to be misled in the slightest degree, I will permit them to withdraw their plea of nolo contendere and call in another judge and set them for trial. I would be disqualified, but they haven't been disclosed to the United States Attorney or any representative of the government, so the defendants would be in no worse position to defend than they were before, so if anyone feels they were misled, or had reason to believe there would be probation extended, or only a fine, I'll permit them to withdraw the plea.

Mr. Emigh: Would your Honor indulge us a very, very short recess, and we can have a conference on this point.

The Court: All right, the Court will recess for ten minutes.

(Short recess.)

(All parties present as before.)

Mr. Smigh: I first want to thank your Honor for indulging us with this recess. I second want to clear the record on one point; no attorney for Mr. Allen's defense, nor the defendant himself, has been in the slightest way misled in this case, and if the Court interpreted my remarks that I might feel that way, I'm sure your Honor will realize there was no such feeling at all.

The Court: No, I didn't assume that; I meant

to say I wanted to eliminate any possibility of misunderstanding.

Mr. Emigh: I want to state we have had a conference, and that the views of the attorneys are not entirely in accord, and after explaining very carefully to the best of our ability to Mr. Allen the situation which is here, he feels he would sooner have the case tried to a jury, and we will ask leave to withdraw the plea to each of the counts of nolo contendere, and substitute therefor a plea of not guilty to each count. Mr. Allen, will you come up?

The Court: I think before I should grant that I will hear from the United States Attorney.

Mr. Erickson: I would like to move for the reinstatement of count 6, under those circumstances.

The Court: What is count 6?

Mr. Erickson: Count 6 is the one that was dismissed as to Allen.

Mr. Emigh: Mr. Allen states he has no objections at all, so we withdraw any objection on the ground of jurisdiction. I don't know whether that re-invests the Court with jurisdiction or not.

Mr. Etter: We have no objection.

The Court: Well, I think what I should do here in view of the situation is to set aside my order dismissing count 6. I think that the record should be that the dismissal of count 6, or the motion of the United States Attorney to dismiss it, was based upon the entering of the plea of nolo contendere to the other counts; that was your understanding?

Mr. Erickson: Yes.

The Court: And that the motion for dismissal

was a conditional one, and conditioned upon the entry of a plea of nolo contendere to the other counts, and that being the situation, the court will set aside and cancel its order dismissing count 6. Now, I think that I should also, though, reserve, if that is necessary, to the defendants the right to raise the point again when the case is brought to trial before the other Judge, because I haven't time now to examine the question whether I can reinstate a count which is once dismissed.

Mr. Emigh: To cure the record so far as we are able, let the record show that the defendant takes no exceptions to the ruling of the Court in re-instanting that count, to make the record as clear as we can.

The Court: Now, do you have anything else to say in that regard, Mr. Erickson?

Mr. Erickson: In regard to the date of trial?

The Court: No, I mean with reference to this motion.

Mr. Erickson: In regard to the motion to withdraw the plea of nolo contendere, I have no objection, and think that the case should be tried if the defendant Allen wishes it tried. However, I would not like to have sentence imposed upon the other two defendants until after disposition of the Allen case. I think that your Honor probably should pass sentence; if another Judge tries the Allen case I think maybe your Honor should pass sentence on Grismer and Keane, since it's gone this far before this Court.

The Court: Well, yes, I see no reason for relinquishing jurisdiction so far as those defendants are concerned. I think, however, too, in view of the fact if the motion is granted to the defendant Allen, a similar opportunity should be given to the other defendants, and I'll hear from their attorneys. Is Mr. Grismer represented by attorney here?

Mr. Hawkins: Yes, your Honor.

The Court: You will have the same opportunity.

Mr. Hawkins: Our plea of nolo contendere as to count 7 still stands.

The Court: How about the defendant Keane?

Mr. Herman: The defendant Keane's pleas of nolo contendere still stand.

The Court: Very well, the motion of the defendant Keane to withdraw—the defendant Allen—I mis-spoke, the defendant James Anthony Allen to withdraw his pleas of nolo contendere to all of the seven counts of the indictment except count 6 will be granted, and the pleas will be withdrawn, and now what pleas are entered for the seven counts of the indictment?

Mr. Emigh: Please of not guilty of all counts.

The Court: That's right, Mr. Allen?

Defendant Allen: Yes.

The Court: Allright, the record may show that the defendant Allen has entered pleas of not guilty to each of the seven counts of the indictment. I think that the case should be disposed of as a whole, here, and I will defer sentencing the other defendants until after the trial of the defendant Allen.

Mr. Herman: If your Honor please, would your Honor be kind enough to grant us a moment for a conference? We have something we may wish to propose.

The Court: Yes. You may withdraw if you wish; I think I have some ex parte matters.

(Short recess from this cause.)

(All parties present as before.)

Mr. Herman: May it please your Honor, counsel for the defendant Keane desire to express their appreciation to your Honor for giving him an opportunity to confer and see whether or not there was anything that should be done further at this particular time. Our agreement is that there is nothing further to be done, if your Honor will excuse the defendant Keane at this time, and his counsel, from attendance upon the Court.

The Court: Very well, he'll remain out on bail and will be notified to come in again. Is there anything else to come before the court this morning. I think perhaps I should say, while attorneys for the defendant Allen and the United States Attorney is here, we have a jury term set here for April. I was just considering the possible trial dates. Of course, that necessarily must be very tentative, because it would depend upon the program of whatever Judge is assigned by Judge Denman and what his program may be. I have a jury in session here up until the week of the 25th of April, and then I have a jury term in Yakima during May, but I

suppose this case—well, it couldn't be tried here if you have criminal cases down there, or would your assistant down there take the cases in Yakima?

Mr. Erickson: Yes.

The Court: Well, it could be tried here in May while I have a session in Yakima. Do you have any ideas about when you might be ready to enter into a trial of the case?

Mr. Etter: Your Honor, May would be allright. I only have this to say; I'll probably be faced with a trial in Superior Court on change of venue with an outside judge in April that may run three weeks or longer, and I was hoping if it was in May it would be toward the middle of the month, to be sure I'm through with this case involving these nine miners from Metaline Falls.

The Court: I go to Boise on the 16th; we weren't going to start the term there until the 23rd. Will it take more than one week to try this case?

Mr. Stocking: I'd say probably two weeks.

The Court: You think it can be tried in two weeks?

Mr. Etter: I think it can be tried in two weeks.

The Court: The 25th of April, that would be a little soon for you?

Mr. Etter: That's right; I won't be through over here, your Honor.

The Court: Well, I think it might be difficult to get an outside Judge, they usually have calendars made up, and we have to wait until they're through

at home. I'll try to arrange it for sometime in May, toward the latter part of May. Is there anything else? If not, the Court will recess until 1:30 this afternoon.

#### Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on March 21, 1949, at Spokane, Washington.

That the above and foregoing contains a full, true, and correct transcript of the proceedings had therein.

Dated this 25th day of March, 1949.

STANLEY D. TAYLOR,  
Official Court Reporter.

[Endorsed]: Filed Mar. 25, 1949.

[Title of Court and Cause.]

### MOTION TO STRIKE EXHIBITS AND TESTIMONY

Comes now James Anthony Allen, defendant in the above entitled action, and upon the close of the plaintiff's case and after counsel for the United States of America having announced that plaintiff rested, moves this honorable court to strike from the evidence in this cause the following matter, to wit:

All exhibits identified and admitted in evidence or identified or admitted in evidence pertaining to and relating to any transactions which said exhibits tend to prove and establish transpiring and occurring or alleged to have transpired or occurred or which said exhibits tend to prove as having transpired or occurred subsequent to the 26th day of December, 1946, as well as all testimony relating to matters and things alleged to have transpired or occurred or which said testimony tends to prove transpired or occurred subsequent to the 26th day of December, 1946, and heretofore objected to by counsel for defendant, on the following grounds and for the reasons as follows:

First, that the evidence affirmative shows and discloses that subsequent to the said 26th day of December, 1946, as appears from the plaintiff's evidence, and particularly from the evidence of the government's witness, Francis Clayton Keane, no conspiracy existed or could have existed between

this defendant and said defendant Francis Clayton Keane, or between this defendant and the defendant Joseph Valentine Grismer, or between any two or more of said three defendants, and that the evidence in behalf of plaintiff affirmatively discloses and shows that the said defendant, Joseph Valentine Grismer, was at no time a party to or a participant in the alleged conspiracy set forth in the indictment on file herein. That said evidence is incompetent for any purpose in the absence of affirmative proof on the part of the plaintiff that at any time subsequent to the 26th day of December, 1946, the conspiracy alleged in the indictment was still in existence and it appearing from the evidence that the defendant James Anthony Allen and the defendant Francis Clayton Keane at no times subsequent to the 26th day of December, 1946, were on friendly relations or did conspire or scheme together to do any act unlawful or otherwise.

And, for the further reason and on the ground that because it affirmatively appears from the testimony adduced from witnesses who have been called and testified on behalf of the government, that the said Joseph Valentine Grismer could not be and was not a party to any conspiracy whatsoever at the time of the inception of any conspiracy as alleged in the indictment against this defendant and the said Francis Clayton Keane and Joseph Valentine Grismer, and therefore could not conspire with or be a party to the conspiracy as alleged in said

indictment with the said defendant Allen after the 26th day of December, 1946.

Dated this 15th day of June, 1949.

R. MAX ETTER,  
J. F. EMIGH,  
JAMES A. MURRAY,  
THERRETT TOWLES,  
WILLIAM E. CULLEN,  
Attorneys for  
Defendant Allen.

[Endorsed]: Filed June 15, 1949.

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[Title of Court and Cause.]

D E F E N D A N T   A L L E N   R E Q U E S T S   T H E  
C O U R T   T O   G I V E   T H E   F O L L O W I N G   I N-  
S T R U C T I O N S   T O   T H E   J U R Y

Instruction No. 1

You are instructed that the indictment in this case is merely a written charge against the defendant to bring the matter of his guilt or innocence before the court for trial, and that you must not under any circumstances infer from such indictment, or the bringing thereof, that the defendant Allen is in any respect guilty of the acts charged in the indictment, nor is such indictment, or the bringing thereof, any evidence of his guilt.

Instruction No. 2

You are instructed that the defendant Allen

cannot be found guilty of the commission of one or more of the offenses charged in Counts 1 to 6, inclusive, of the indictment by proof alone that he did aid, abet, or counsel in the doing of the overt acts charged in paragraph two of each of said respective counts, unless and until you further find from all of the evidence in the case beyond a reasonable doubt that he did likewise knowingly and intentionally conspire to devise and intend to devise the identical scheme and artifice set forth in paragraph one of each of said Counts 1 to 6, inclusive; mere aiding or abetting or counselling in the doing of one or more of the overt acts charged in Counts 1 to 6, inclusive, of the indictment is not sufficient to constitute the offenses charged. You must first find that the defendant did knowingly and intentionally conspire to devise the identical scheme or artifice set forth in paragraph one of the first count in the indictment.

### Instruction No. 3

You are instructed that before you can find the defendant Allen guilty of any of the offenses charged in the indictment you must first find from the evidence and beyond a reasonable doubt that said defendant Allen did knowingly and with fraudulent intent devise and intend to devise the identical scheme and artifice to defraud charged in the indictment and did knowingly and fraudulently intend thereby to obtain from the purchasers of treasury stock, as elsewhere defined in these instructions, money received from the public sale of said stock,

and unless such fraudulent intent did actually exist at the time the treasury stock of said corporations, of either thereof, was offered to the public for sale, defendant Allen is not guilty of the offenses so charged; and it is your duty to acquit the defendant Allen, and in this connection you are instructed that it is not material if the funds procured by the sale of said stock were diverted for other purposes, if you find they were so diverted, if such diversion was not contemplated at the time of the offering of said stock for sale.

#### Instruction No. 4

You are instructed that any fraudulent act done or intent entertained by the defendant Keane and undisclosed to the defendant Allen would not be binding upon the defendant Allen or chargeable against him, though he may have directly or indirectly profited thereby, unless at the time he shared in such profits he had acquired knowledge that Keane intended to defraud the Lucky Friday Extension or Pilot Companies by his acts.

#### Instruction No. 5

You are instructed that the defendant Allen is not charged with the crime of embezzlement of any monies from the Lucky Friday Extension or Pilot Companies. This court would have no jurisdiction of such a charge in this case and as such a charge would have to be prosecuted in the State courts of Idaho. The use of the term "embezzlement" in the

indictment herein and in the instructions and the evidence relates solely to the alleged purposes of the conspiracy, and unless you find beyond a reasonable doubt the alleged conspiracy existed, you are cautioned to wholly disregard any evidence relating to diversion of funds of the Extension and Pilot Companies.

#### Instruction No. 6

You are instructed that there is no evidence in this case from which you may legitimately infer that the defendants, in order to create an appearance of mining activity on the part of the Extension and Pilot Companies, did expend a small portion of the funds belonging to said corporations on the mining properties thereof for the purpose of increasing the market value of defendants' promotion stock. To the contrary the evidence is that in excess of \$100,000 was employed in legitimate mining operations, and the inference which you must draw from this evidence is that of innocence.

#### Instruction No. 7

You are instructed that the Government has produced no evidence in this case that the defendant Allen has schemed and conspired to conceal from the stockholders of said Lucky Friday Extension and Pilot Companies information concerning the receipts and expenditures of moneys of said corporations.

#### Instruction No. 8

You are instructed that the Government has

produced no evidence in this case that the defendant Allen has schemed and conspired that proper books of account of the Lucky Friday Extension and Pilot Companies would not be kept and maintained.

### Instruction No. 9

As you have already been instructed, a conspiracy may be proved either by direct or circumstantial evidence. It is not usual for it to be proved by the use of circumstances. Men who agree to violate the statutes of the United States do not very often call in a stenographer and prepare an agreement to that effect. For this reason, the law says that, in a conspiracy case, the Government may be permitted to present its case on what the law calls "circumstantial evidence." That is what the Government is striving to do here. It contends that certain things happened and that certain events occurred. It contends that these could not have happened by mere coincidence unless there was an agreement for a concert of action between at least two of the defendants. Therefore, it asks you, as a jury, to conclude that there must have been a conspiracy. The Government has a right to so contend. Yet, when it does ask for a conviction on circumstantial evidence, it has the burden, not only of proving the facts or circumstances to your satisfaction beyond all reasonable doubt, but it must also satisfy you, beyond all reasonable doubt, that such circumstances are only consistent with guilt. You must believe, before you can find the defendant guilty in this case, that the circumstances proved

as to him exclude all reasonable possibility of his innocence, and that, after considering all the inferences reasonably to be drawn from the circumstances, your sound judgment requires you to reject other inferences and accept only the inference of guilt. The law requires that you study all the evidence and that you weigh carefully the conclusions or inferences favorable to the defendant as well as those unfavorable.

#### Instruction No. 10

You are instructed that in this case the evidence offered by the Government to establish a conspiracy to use the mails to defraud and the intent of the defendant Allen to use the mails to defraud is circumstantial in character, and in this regard you are instructed that the proof of any element of a crime, which rests upon circumstantial evidence, must establish such element, not only beyond a reasonable doubt, but to the exclusion of every reasonable hypothesis of innocence.

#### Instruction No. 11

You are instructed that the stock issued by the Lucky Friday Extension Mining Company and the Pilot Silver-Lead Mines, Inc., in connection with the transactions mentioned in the testimony in this case falls into three classifications: First, promotion or vendor's stock which was issued to the owners of the mining properties or contracts therefor that were to be transferred to the companies; second, attorney's stock which was stock issued for services

of attorneys in incorporating and organizing said corporations, making title examinations, and passing on the legality of other matters connected with the organization of said corporations; and, third, treasury stock which was stock placed in the treasury and offered for sale to the public in accordance with SEC rules and regulations.

### Instruction No. 12

You are instructed that the defendant Allen had a right to sell promotion or vendor's stock which came into his possession at any time after one year from the date of the first public offering of stock by either the Pilot or Extension Companies respectively had expired, whereupon the mere sale thereof was no fraud upon the public or the purchasers thereof, and the matters and things set forth in the prospectus for the offering of treasury stock would constitute no matter upon which fraud in the sale of said promotion or vendor's stock could be based.

And therefore you are not to consider any acts charged in the indictment as being proven by sales of promotion or vendor's stock by defendant Allen after the expiration of one year from the date of the first public offering of such stock, unless you further find by the evidence and beyond a reasonable doubt such sale was made in furtherance of an unlawful conspiracy.

## Instruction No. 13

You are instructed that the defendant Allen had the legal right to sell any stock in the Pilot or Extension Companies owned by him upon the following conditions:

First, that such sale occurred after the expiration of one year after the date of the first offering of such corporations' stock for sale through an underwriter; or,

Second, upon brokers transaction executed upon customers' orders on any exchange or in the open or counter market, but not on the solicitation of such orders.

Therefore, unless you do find from the evidence and beyond a reasonable doubt that said defendant did participate in the conspiracy charged in the indictment no sales of stock belonging to the defendant, of which evidence has been introduced in this case, may be by you considered as constituting fraudulent transactions of the defendant.

Title 15, USCA, Sec. 77d (1), (2).

## Instruction No. 14

The witnesses Francis C. Keane and Joseph V. Grismer in this case are confessedly what is known in the law as accomplices. The fact that a witness is known as an accomplice doubtless operates and ought to operate largely against the credibility of his testimony, but the jury is not bound to reject such testimony merely because the witness is an accomplice. Accomplices are competent witnesses,

and it is your duty to consider their testimony, but in doing so, you should weigh it and scrutinize it with great care. You are to test its truth by inquiring into the probable motives which prompted it and to what extent such motives might have colored or warped it. You are to look into the testimony of other witnesses in the case for corroborating facts or circumstances. Where the testimony of an accomplice is supported in material respects by credible and trustworthy evidence, you are bound to credit it, but where it is unsupported and uncorroborated, you are not to rely upon it unless, after the exercise of great caution, it produces in your minds the most positive conviction of its truth, in which case you are justified in acting upon it.

#### Instruction No. 15

You are the exclusive judges of what is the evidence in this case, and of the weight and credit to be given the testimony of each witness. In doing this, you may take into consideration the conduct, appearance and demeanor of the witness while testifying; his apparent candor and frankness, or the lack of such qualities, the reasonableness or unreasonableness of his story, its probability or its improbability, as measured by your common experience in life; the opportunity on the part of any witness, of knowing or being informed concerning the matters about which he testifies; his intelligence, or lack of intelligence; any prejudice, or bias, disclosed by him; any motive, which in your judgment

would cause him to warp or color his testimony one way or the other; and the interest, if any, which he may have in the outcome of the case. I further instruct you, if you find that any witness has wilfully testified falsely as to any material fact, then you are at liberty to disregard his entire testimony, except insofar as it is corroborated by other evidence of a credible character.

#### Instruction No. 16

The jury are instructed that if they believe from the evidence any witness has been successfully impeached, by reason of statements made outside of the case conflicting with statements made on the witness stand, or if they find that any witness has wilfully sworn falsely to any matter or thing material to the issues in the case, they will be justified in disregarding the whole testimony of such witness except in so far as they may find the same to be corroborated by other credible evidence in the case or by facts and circumstances proved on the trial.

Blashfield, Instructions to Juries,

Vol. 2, Instr. 871.

R. MAX ETTER,

J. F. EMIGH,

JAMES A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN,

Attorneys for

the Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 15, 1949.

[Title of Court and Cause.]

**MOTION FOR JUDGMENT OF ACQUITTAL  
AT CLOSE OF PLAINTIFF'S CASE**

At the close of evidence and testimony on behalf of the plaintiff, United States of America, and the United States Attorney for the Eastern District of Washington having stated to the court that plaintiff had rested and had completed its case in chief, the said defendant James Anthony Allen by and through his attorneys of record hereby moves the court to order the entry of a judgment of acquittal of all offenses of any kind or nature as charged, alleged and laid in each and every one of the counts in said indictment against the defendant James Anthony Allen, for the reasons and on the grounds as follows:

1. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 1 of the indictment to support any charge of crime alleged therein.
2. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 2 of the indictment to support any charge of crime alleged therein.
3. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged

in Count 3 of the indictment to support any charge of crime alleged therein.

4. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 4 of the indictment to support any charge of crime alleged therein.

5. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 5 of the indictment to support any charge of crime alleged therein.

6. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 6 of the indictment to support any charge of crime alleged therein.

7. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 7 of the indictment to support any charge of crime alleged therein. And for the further reason as to Count 7 of the indictment, that the testimony of the accomplice, defendant, Francis Clayton Keane, fails to establish any conspiracy as charged in the indictment, if credible, and in any event that the character of said witness is such under the evidence that his testimony is wholly insufficient

and incredible to establish a conspiracy as alleged in Count 7 or to connect this defendant therewith.

Dated this 15th day of June, 1949.

R. MAX ETTER,

J. F. EMIGH,

JAMES A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN,

Attorneys for

Defendant Allen.

[Endorsed]: Filed June 15, 1949.

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[Title of Court and Cause.]

**MOTION FOR JUDGMENT OF ACQUITTAL  
AT CLOSE OF ALL TESTIMONY**

At the close of the evidence and testimony in this case in behalf of the plaintiff, the United States of America, and the defendant, James Anthony Allen, and after respective counsel for both parties have stated to the court that each of said parties had rested and completed its case, the said defendant James Anthony Allen by and through his attorneys of record hereby moves the court to order the entry of a judgment of acquittal of all offenses of any kind or nature as charged, alleged and laid in each

and every one of the counts in said indictment against the defendant James Anthony Allen for the reason and on the grounds as follows:

1. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 1 of the indictment to support any charge of crime alleged therein.
2. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 2 of the indictment to support any charge of crime alleged therein.
3. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 3 of the indictment to support any charge of crime alleged therein.
4. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 4 of the indictment to support any charge of crime alleged therein.
5. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 5 of the indictment to support any charge of crime alleged therein.
6. That the plaintiff has wholly and completely

failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 6 of the indictment to support any charge of crime alleged therein.

7. That the plaintiff has wholly and completely failed to prove and establish beyond a reasonable doubt all the material facts and allegations alleged in Count 7 of the indictment to support any charge of crime alleged therein. And for the further reason as to Count 7 of the indictment, that the testimony of the accomplice, defendant, Francis Clayton Keane, fails to establish any conspiracy as charged in the indictment, if credible, and in any event that the character of said witness is such under the evidence that his testimony is wholly insufficient and incredible to establish a conspiracy as alleged in Count 7 or to connect this defendant therewith.

Dated this 16th day of June 1949.

R. MAX ETTER,

J. F. EMIGH

JAMES A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN,

Attorneys for Defendant  
Allen.

[Endorsed]: Filed June 16, 1949.

[Title of Court and Cause.]

### VERDICT

We, The Jury In The Above Entitled Cause, find the defendant James Anthony Allen, Not guilty as charged in Count 1, Not guilty as charged in Count 2, Not guilty as charged in Count 3, Not Guilty as charged in Count 4, Not guilty as charged in Count 5, Not guilty as charged in Count 6, and is guilty as charged in Count 7, of the Indictment.

JOHN A. RAUSCH,  
Foreman.

[Endorsed]: Filed June 19, 1949.

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[Title of Court and Cause.]

### MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL ON COUNT VII

Now comes the defendant, James Anthony Allen, in the above entitled cause and pursuant to Rule 29B of the Federal Rules of Criminal Procedure, and moves that the Court will order a verdict of not guilty as to him on Count VII of the Indictment herein or for a new trial as to Count VII on the grounds and for the following reasons, to-wit:

(1) That the finding of the Jury that defendant herein was guilty upon Count VII was and is

wholly, and inherently inconsistent and wholly and completely repugnant with, and to, its findings of not guilty upon Counts I, II, III, IV, V, and VI of said Indictment; and for the further reason that there was not and is not any legal evidence or any evidence whatsoever to support the verdict of the Jury on Count VII of the Indictment other than the exact and self-same facts alleged and pleaded in detail and received in evidence in support of the other Counts, namely, Counts I, II, III, IV, V, VI, which were likewise pleaded in the same exact detail in support of Count VII; that the Jury in view of, and after consideration of, all of the self-same and exact facts and allegations pleaded in detail in Counts I to VI of the Indictment and repeated in Count VII found the defendant not guilty upon each and every one of said Counts I to VI included, and upon the facts pleaded in support of said Counts; and therefore all of said facts in Counts I to VI should be eliminated in toto when considering said Count VII; that this being done, there was, and is no legal evidence or evidence of any kind whatsoever in fact or law to support the verdict in any manner whatsoever on Count VII.

(2) The verdict of the Jury on Count VII is contrary to the evidence in said cause.

(3) The verdict of the Jury on Count VII is contrary to law.

(4) Errors by the Court in the reception and

exclusion of evidence were prejudicial to the defendant.

(5) The Court erred in its charge and instructions to the Jury.

(6) That no conspiracy in view of No. (1) set forth above has been proved by the Government and the Government has also failed to prove any criminal intent or either separate or joint and concerted criminal action on the part of the defendant, and has failed to connect the defendant in any manner whatsoever with the crime set out in Count VII in view of and because of No. (1) heretofore set forth.

R. MAX ETTER,  
J. F. EMIGH,  
JAMES A. MURRAY,  
WILLIAM E. CULLEN,  
THERRETT TOWLES,  
Attorneys for Defendant,  
James Anthony Allen.

Copy received this 24th day of June 1949.

HARVEY ERICKSON,  
U. S. Atty.  
Attorney for U.S.,  
Plaintiff.

[Endorsed]: Filed June 24, 1949.

[Title of Court and Cause.]

### MOTION IN ARREST OF JUDGMENT

Now comes the defendant, James Anthony Allen, in the above entitled cause and moves that the verdict of guilty returned against him by a Jury in this Court on Count VII of the Indictment upon the 19th day of June, 1949, be arrested and no judgment and sentence be imposed thereon for the following reasons:

(1) That the offense alleged and set out in Count No. VII was not and has not been proved as against the defendant by any competent or legal evidence, or any evidence whatsoever and for the further reason:

(a) That the finding of the Jury that defendant herein was guilty upon Count VII was and is wholly, and inherently inconsistent and wholly and completely repugnant with, and to, its finding of not guilty upon Counts I, II, III, IV, V, and VI of said Indictment; and for the further reason that there was not and is not any legal evidence or any evidence whatsoever to support the verdict of the Jury on Count VII of the Indictment other than the exact and self-same facts alleged and pleaded in detail and received in evidence in support of the other Counts, namely, Counts I, II, III, IV, V, VI, which were likewise pleaded in the same exact detail in support of Count VII; that the Jury in view of, and after consideration of, all of the self-same and exact facts and allegations pleaded in detail in

Counts I to VI of the Indictment and repeated in Count VII found the defendant not guilty upon each and every one of said Counts I to VI, included, and upon the facts pleaded in support of said Counts; and therefore all of said facts in Counts I to VI should be eliminated in toto when considering said Count VII; that this being done, there was, and is no legal evidence or evidence of any kind whatsoever in fact or law to support the verdict in any manner whatsoever on Count VII.

(2) There was and is no evidence in view of the above, sufficient to prove, that the defendant did commit or has committed any offense against the United States of America, as to Count VII of the Indictment.

R. MAX ETTER,  
J. F. EMIGH,  
JAMES A. MURRAY,  
WILLIAM E. CULLEN,  
THERRETT TOWLES,  
Attorneys for Defendant,  
James Anthony Allen.

Copy received this 24th day of June 1949.  
HARVEY ERICKSON,  
U. S. Attorney,  
Attorney for U.S.,  
Plaintiff.

[Endorsed]: Filed June 24, 1949.

District Court of the United States for the Eastern  
District of Washington, Northern Division

No. C-7975

JUDGMENT AND COMMITMENT

UNITED STATES OF AMERICA,

vs.

JAMES ANTHONY ALLEN

On this 16th day of July, 1949 came the attorney for the government and the defendant appeared in person and by counsel, R. Max Etter and J. F. Emigh.

It is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of Conspiracy in Violation of Sec. 88, Title 18, U.S.C.A. as charged in Count VII of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eighteen (18) Months.

It Is Adjudged that stay of execution be and hereby is granted to July 23, 1949, at 11:00 a.m.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

LLOYD L. BLACK,  
United States District Judge.

Presented by:

HARVEY ERICKSON,  
United States Attorney.

The Court recommends commitment to: United States Penitentiary at McNeil Island, Washington.

A. A. LaFRAMBOISE,  
Clerk.

By EVA M. HARDIN,  
Deputy.

[Endorsed]: Filed July 16, 1949. Recorded General Book 15, Page 982.

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[Title of District Court and Cause.]

BAIL BOND PENDING DETERMINATION  
OF APPEAL

Know All Men by These Presents, That we James A. Allen as Principal, and the National Automobile & Casualty Insurance Co., a Corporation, as Surety, are held and firmly bound unto the United States of America, in the full and just sum of Fifteen

Thousand (\$15,000.00) Dollars, to be paid to the United States of America to which payment well and truly to be paid, we bind ourselves and heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of July in the year of our Lord One Thousand Nine Hundred and Forty-nine.

Whereas, Lately at the last term of the District Court of the United States, for the Eastern District of Washington, Northern Division, in a suit pending in said Court, between the United States of America, plaintiff, and James A. Allen, defendant, a judgment and sentence was rendered against the said defendant James A. Allen and the said James A. Allen has appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit.

Now, the condition of the above obligation is such that if the said James A. Allen shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause, in said Court, and shall prosecute his said appeal, and abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in the execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed, or the appeal is dismissed; and if he shall

appear for trial in the District Court of the United States, for the Eastern District of Washington, Northern Division, such day or days as may be appointed for retrial by said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

JAMES A. ALLEN,

Principal.

NATIONAL AUTOMOBILE &  
CASUALTY INSURANCE  
COMPANY,

[Seal]

KARL J. KAFFLEN,

Resident Agent.

By ED GROVES,

Attorney-in-Fact.

[Corporate Seal]

This Bond is Void if in excess of \$15,000.00.

This Bond is Void if issued after August 15, 1949.

State of California,

County of Los Angeles—ss.

On this 20th day of July, in the year 1949, before me, Jean Gunter, a Notary Public in and for said County and State, personally appeared Ed Groves, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the National Automobile and Casualty Insurance Co., and acknowledged to me that

he subscribed the name of the National Automobile and Casualty Insurance Co., thereto as surety, and his own name as Attorney-in-Fact.

[Notarial Seal]

JEAN GUNTER,

Notary Public in and for Said  
County and State.

My Commission expires August 6, 1952.

Jurat-Calif.

Form 4437A 5 M-6-48 S.F.

Bond approved as to Form:

FRANK R. FREEMAN,

Asst. United States Attorney.

Bond approved this 22nd day of July, 1949.

SAM M. DRIVER,

Judge.

[Endorsed]: Filed July 22, 1949.

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[Title of Court and Cause.]

### NOTICE OF APPEAL

1. Name and Address of Appellant.

James Anthony Allen

1327 Old National Bank Building  
Spokane 8, Washington.

2. Name and Address of Appellant's Attorneys.

R. Max Etter

726 Paulsen Building,  
Spokane 8, Washington

J. F. Emigh  
55 West Broadway  
Butte, Montana.

James A. Murray  
1624 Eye Street, N.W.,  
Washington, D. C.

William E. Cullen,  
726 Paulsen Building,  
Spokane 8, Washington.

Therrett Towles  
1231 Old National Bank Building,  
Spokane 8, Washington.

3. Offense.

Violations:

Title 18, U.S.C.A., Sec. 338.

Using Mails to Defraud—Counts I to III incl.—Acquitted.

Title 15, U.S.C.A., Sec. 77 (q).

Fraud in Sale of Securities—Counts IV to VI incl.—Acquitted.

Title 18, U.S.C.A., Sec. 88.

Conspiracy—Count VII—Guilty.

4. Date of Judgment.

July 16, 1949.

5. Brief description of judgment and sentence.

Adjudged convicted upon verdict of guilty of offense of conspiracy in violation of Sec. 88, Title 18 U.S.C.A., as charged in Count VII of Indictment. Adjudged that appellant be

committed to custody of Attorney General for imprisonment for 18 months.

6. Admitted to bail.

I, James Anthony Allen, the above-named Appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment above mentioned.

Dated July 25, 1949.

JAMES ANTHONY ALLEN,  
Appellant.

Two copies of above notice mailed to Harvey Erickson, U. S. Attorney, this 25th day of July, 1949.

Copy of notice mailed Clerk, U. S. Court of Appeals, this 25th day of July, 1949.

EVA M. HARDIN,  
Deputy Clerk.

[Endorsed]: Filed July 25, 1949.

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[Title of Court and Cause.]

IMPOSITION OF SENTENCE AS TO  
KEANE AND GRISMER

Be It Remembered that the above-entitled matter came on before the court at Spokane, Washington on Friday, August 5, 1949, Honorable Sam M. Driver, United States District Judge, the defendant Francis Clayton Keane being personally present and represented by his counsel William

Langroise of Boise, Idaho, and R. S. Munter and H. E. T. Herman of Spokane, Washington; the defendant Joseph Valentine Grismer being personally present and represented by his counsel William S. Hawkins of Coeur d'Alene, Idaho, whereupon the following proceedings were had and done, to wit:

The Court: I might say that counsel should proceed on the assumption that the Court has had a rather comprehensive pre-sentence investigation report, has consulted and advised with the Probation Officer as to these two defendants, and has examined the voluminous testimony of both Mr. Keane and Mr. Allen in the trial of United States against Allen, and has also consulted with Judge Black, who was the presiding judge in the Allen case, so that you may assume that the court has a rather complete background of information, in making your statements. Do you have any statement to make first, Mr. Erickson?

Mr. Erickson: No, if it please the Court, we have no statement to make unless the court desires something explained in the case. We have Mr. Denney and Mr. Stocking and myself to try and answer any questions the Court may have.

The Court: Very well. Mr. Grismer isn't represented by counsel?

Mr. Erickson: Yes, by Mr. Hawkins.

The Court: Well, I don't think I need to hear from you. I had in mind putting him on probation. Everybody seems to agree that should be done. I'll hear from counsel for the defendant Keane.

Mr. Langroise: If your Honor please, in light of your statement I'll try to confine my remarks primarily to information which I have as to the things which we believe are related to the indictment and the plea, as I have known the defendant Keane for perhaps some 25 years, and as a matter of fact longer than that, some thirty years, I guess. I went to school with him and have known him intimately since that time. Along in February of 1947, the latter part, I believe, I received a telephone call from Mr. McCann, who is a partner of Mr. Keane, who had returned rather recently, or within a year or so, from the service, and I was asked to come from my office in Boise to meet with he and Mr. Keane in Wallace. I did make the trip, and was at that time advised that there was something of this situation, and that they were satisfied that these funds were not going to be available to be returned, they couldn't get them, there had to be some action taken to try to preserve, if possible, what assets there were for the benefit of the creditors.

Mr. McCann and myself took the secretary in Mr. Keane's office and gathered together all of the cancelled checks, all of the records that they had, got someone to assist in trying to assemble that information to try to determine if possible, as best we could, what the facts were. It developed that something in excess of \$75,000 of Mr. Keane's money had gone into the enterprise. It also developed that Mr. Keane had no stock, he had no funds, and that the funds were elsewhere.

After several days I returned to Boise and a further check was to be made to try to get additional information. Following that, Mr. Keane and Mr. McCann came to my office in Boise where they remained for some three weeks or better, in trying to gather such facts as we could concerning this matter. We had some difficulty in securing information from Mr. Keane. At times he was difficult to get it from, not through unwillingness, but otherwise. Following that we prepared and instituted an action against Mr. Allen which had for its purpose the recovery of stock and funds for the benefit of creditors of the partnership. This suit was filed in May, the latter part of May of 1947. We made a complete and full disclosure of all the facts without regard of where the stones might fall in our complaint, setting up the various properties acquired, the various obligations and contributions, that Keane's contributions had exceeded Allen's in excess of \$75,000.

The Court: That was a year or more before this action started?

Mr. Langroise: And a year or more before there was any investigation—that is, before we knew of any investigation. In this action, if your Honor please, we sought to have a receiver appointed, as the books, all of the assets whatever they may have had in these various companies in which stock had been sold and which had originally or in some instances had been organized by Allen and Keane, were in the possession of Mr. Allen, so we also

joined these various corporations, hoping to tie in with their books, bie in whatever assets they had, give a receiver an opportunity to try to recover and salvage out of these funds sufficient to take care of the creditors of the partnership.

The hearing on our application for a receiver was set for I believe in was sometime in June or July. We came north, that is, I came north, and met them here. Prior to that time we had had casual discussion and found that we were getting nowhere, but we met this time with counsel for Mr. Allen and with Mr. Allen. I say we met; Mr. McCann and myself met, as Mr. Keane did not meet and was not able to participate in those meetings. What looked like an opportunity perhaps to work the matter out developed, and the hearing on our application for receiver was continued for a few days. As a result of this conference an agreement was entered into between Mr. Allen and Mr. Keane whereby Mr. Allen agreed to put into a trust fund, or into a trust, stocks of various kinds and in various amounts which I will give you in detail a little later, and to proceed with the registration and development of this so it would be possible to carry these properties on. We also at that time worked out, or a trust was created to be the depository of these stocks which Mr. Allen was to put into the trust, and at the same time arrangements were made with one of the companies with which they were indebted to make certain transfers to them in satisfaction of their liability to that company.

As a part of this agreement a stipulation was entered into by Mr. McCann and myself as counsel for Mr. Keane, with Mr. Allen's attorneys, that the Idaho action might be dismissed. Time went on. No progress was being made. It became evident to us that there was no intention on the part of Mr. Allen to carry through on his agreement, so we proceeded to make application to the District Court of Idaho in which the action had been pending, to set aside the dismissal on the ground of fraud. A hearing was held upon our application, and it was granted. That matter was then appealed by Mr. Allen to the Supreme Court of Idaho. During the time that all of this was taking time, last spring the Supreme Court, I'm not sure of my dates on that, if your Honor please, but the Supreme Court at any rate handed down a decision reversing the District Judge on the ground that there was some question as to service with respect to some of the defendants, also a question as to whether or not there had been a sufficient showing as to our moving within the time that we should move, within the time that we became convinced of this, otherwise determining the right to set aside the default. Following the handing down of this decision by the Supreme Court we filed additional affidavits with respect to our showing, noticed up the others, as to our intention to seek the setting for hearing, and ultimately the joinder has been made and the matter is now set for hearing tomorrow at Wallace on our application.

I have perhaps gone into considerable detail, but I wanted to do so merely, if your Honor please, to indicate to you the good faith that has been evidenced by Keane in regard to this matter. The entire burden of the expense of this has been borne by Keane. All of the effort has been put out by Keane, with no assistance whatsoever from anybody. That case will be continued and will be prosecuted, and Keane of course is most essential to us in trying to carry through that litigation which has for its purpose the recovery of the funds which the creditors of this partnership are entitled to receive. I know of my own knowledge that Mr. Keane is without funds and has had to borrow money to try to carry forth and carry on this litigation. If I may give you some idea of the amount of stocks that we recovered and got into this trust—

The Court: Yes.

Mr. Langroise: Mr. Allen agreed in the contract and there was to be put into the trust, 525,000 shares of Consolidated Silver Lead, 125,000 shares of this was used in the settlement of one of the claims of the partners against the partnership of one of the other companies; there is now in the trust 400,000 shares of Coeur d'Alene Consolidated Silver Lead Mines, Inc.; 100,000 shares of Lucky Friday Extension. There was supposed to go into the trust, but which I believe has never been put into it, but Allen agreed to put into it, 100,000 shares of Hunter Creek Mining Company, 300,000

Pilot Silver Lead Mines, 400,000 shares of Alma Mining Company, 400,000 shares of Lexington Silver Lead Mines, Inc., 350,000 shares of Hunter Silver Lead Mines, Inc., 250,000 shares of Goldstone Mining Company, and 250,000 shares of War Eagle Silver Lead Mining Company. He also in the trust, under the agreement, and it was set forth in the trust, was to see that the \$25,000 which the Coeur d'Alene Consolidated Silver Lead Mines, Inc., owed to the partnership be immediately turned over by the Coeur d'Alene Consolidated Silver Lead Mines to the trustees for the purpose of application to the creditors of the partnership. He also undertook to have B. W. Porter, who owed the partnership, repay \$8,000.00 to the trustees for the purpose of carrying on or for distribution to the creditors. Those sums, however, were never in fact put into the trust. Of all of the stocks and all of the monies, if your Honor please, I believe there was 100,000 shares of Pilot that Keane had. All the others was stock that Allen had in his possession, as he had all of the companies in his possession, and the control of all of the companies.

So much for that phase of it, and I give that to you to indicate his good faith, his necessity, so far as the benefit of the public, that he be able to carry on and prosecute this litigation.

In addition to this, if your Honor please, when the S.E.C. first started making their investigation and Mr. Keane was contacted, I think they will bear me out in this, that anything that he has told them

has been true. I think they will bear out that he has given them cooperation, that he has not attempted in any manner to impede or hinder justice, that he has done everything that is within his power to assist and to try to make restitution and correct this situation.

It has been my opportunity to observe Mr. Keane during the course of the early part of this period. There was a great deal of the time, a big part of the time, that we found it very difficult, because of his then condition, to get any information from him, or for him to be of any assistance. I was able to determine this because of my close association. While it might not be so evident to others, it was most evident to me. Since that time Mr. Keane has been sent, or went, to a hospital where it was found that he was suffering very seriously from mal-nutrition. That condition has been partially and is being corrected. He has since been useful, been able to carry on his profession, and is now the useful citizen that he was when I knew him for many, many, many years before this started.

I don't want to go farther, as Judge Herman and Mr. Hunter will present others. I merely want to say to your Honor, and I say this with all sincerity, that if there ever was an incident where a man was entitled to consideration of the Court, where I believe, sincerely believe, for the best interests of everyone, I believe this is one.

Mr. Herman: May it please the Court; your Honor has told counsel that he has had the advantage of a conference with Judge Black. All I know

about what Judge Black said is what I read in the paper.

The Court: Pardon me; I also had a transcript from the court reporter here of Judge Black's remarks on the occasion of imposing sentence on the defendant Allen.

Mr. Herman: Fine. I want to say that Judge Black was quoted in the paper as saying he believed Mr. Keane told the truth and that the other defendant did not. I further noticed that Judge Black said that it was not his custom to grant probation where a man saw fit to gamble and lose by standing trial, and it just seems to me that the natural corollary of that would be that he would give very serious thought to probation in the event that a man came in and rendered what assistance he could to the United States Government and made a complete and a free and a frank disclosure. I noticed that the new Criminal Code has, according to a note from the reviser, made it clear that they wanted the power of probation extended, they've put in a sentence into the code that makes it clear that the courts of Hawaii and Alaska likewise have the power to grant probation. They have added a final paragraph to the code which provides that when a man complies with the terms of probation, that that shall be a complete termination of any further liability as punishment.

Now, I think that those two changes in the law should be given a very great consideration by your Honor. They mean what? They mean that Con-

gress has tried probation, that the Federal Judges have taken advantage of the right that Congress gave them to use the power of probation, and that Congress is so pleased with the result that they have seen fit to extend the powers of the trial judge to other jurisdictions than those to which the original text of the Act perhaps limited, and they have made clear that if the court used the power of probation, that at the expiration of five years that brought an end to all further liability.

Now, if your Honor please, you have had a far greater experience as a prosecutor than the limited experience that was mine; for a while before World War I I was a prosecutor, and for a short time after World War I, when I served as a prosecutor. I say that because of a conclusion that I came to during my experience, and that was this; that a man who had committed a wrong against society and then ultimately confessed, and then aided the state in seeking to convict others who perhaps were not quite so honest, or perhaps had not quite the degree of contrition that he possessed, it always seemed to me that he was rendering a public service by aiding the prosecutor. Now, the code provides that when in furtherance of justice and for the benefit of the public, as well as the defendant, the court finds it is fit and proper to give probation, that he shall do so.

It seems to me that the entire record of this man as related by Mr. Langroise is one which was a record of where, except for the time that he com-

mitted the original wrong, he has done all that he could to right it, and of course, if Congress didn't want consideration given to his conduct subsequent to the time the original wrong was committed, they probably wouldn't have put the provision in the statute that they have, and Mr. Munter and Mr. Langroise both know Mr. Keane a little longer than I have, but I know him well enough to do something that I have never, to the best of my knowledge, done before. Next month it will be 35 years since I started practicing in this court. I was always proud of my responsibilities as an officer of this court, which during that time has been presided over by Judge Rudkin, Judge Webster, Judge Schwellenbach and yourself, judges who have won far-flung acclaim for their fairness, their good sense, and their integrity, and when you serve as an officer in such a court you have to be careful about what you say, and you have to weigh your words when you talk to a judge, and for that reason I'm about to do something, as I say, that I've never done before. In all the criminal cases that I have tried in this court, never before have I told the court what I'm telling your Honor now, that I believe if your Honor will exercise the power which Congress in its wisdom conferred upon you, and grant probation, I think at the end of five years, when the time for the expiration of the probation period comes up, and forever afterward, your Honor will always be proud of the fact that he tempered justice with mercy and promoted the pub-

lic welfare and interests by exercising the power that Congress said he should; and so I leave to Mr. Munter the final chore of presenting just why we believe Mr. Keane should have probation.

Mr. Munter: If your Honor please, I feel that Judge Herman and Mr. Langroise have so fully presented the matters which we wished to call to your Honor's attention in connection with our request for probation in this case, that I don't really think there's anything I could add to what has been said. It's true, as Judge Herman said, I have known Mr. Keane longer than Judge Herman has, but not as long as Mr. Langroise has, and I think that the case itself, his course of conduct which Mr. Langroise set out to your Honor this morning, shows the innate honesty of the man. I think his integrity can't better be reflected than in what Judge Black said, as reported in the public print, I was not here at the time, that he believed what Mr. Keane testified to in the case which was tried before Judge Black.

It's apparent that here's a man that is worth saving; here's a man who has been a valuable citizen of his community, here's a man who has been a valuable addition to the bar of his state, and all of those things hang in the balance of what your Honor does here today. He has done everything, it seems, that could reasonably be expected of him in the way of making restitution for the situation which he in part created, and he is carrying that on in good faith; he has helped in every possible way, and I think that all of the govern-

ment officials who had contact with him are of the same opinion that I express to your Honor here, that the man did truthfully and honestly try to aid them, in all ways, in getting at the bottom of a very difficult situation. I'm not saying that they couldn't possibly have gotten to the bottom of it without the aid of our client, but certainly it was a real aid to them, and made possible actually getting this case in the situation that the government's case finally was, and there is of course the further situation that they must go ahead and see what action or money can be secured for those which suffer from the losses which were brought about. Under all the circumstances, fully realizing my responsibility as an officer of this court, I, along with my distinguished associates, ask your Honor to grant to this defendant here probation.

The Court: Let's see, will Mr. Grismer and Mr. Keane step forward, please? The attorneys may come forward if you wish.

Mr. Stocking: If the Court please, in view of your Honor's remarks about having read the record in the Allen case, I thought I should make one observation.

The Court: Yes, indeed.

Mr. Stocking: Naturally in the trial of the Allen case the defendant's attorneys attempted to try the defendant Keane, and in the course of doing so, there was an intimation, they intimated, at least, into the record, the fact that the defendant Keane was an eager witness, even going so far as to inti-

mate that he had some part in the running of the case or in the prosecution of the case. That was an effort, of course, to try him rather than the defendant Allen, and I just wanted to make this observation, that the defendant Keane did testify for the government, but he did so reluctantly. It was a hard thing for him to have to do, to be called in here and to give the kind of testimony that he was asked to give, and I thought in view of the fact that there was that intimation in the record, that I'd like to make that statement.

The Court: All right. I've given this, naturally a great deal of thought, and as I stated at the outset here, I've sought information wherever I could get information that would be helpful, and have spent a good deal of time on it. I note that in his remarks on the occasion of sentencing the defendant Allen, Judge Black made the remark that he thought so far as these operations were concerned, that there wasn't a great deal of difference in culpability between the defendant Allen and the defendant Keane. From my reading of the record, of course I appreciate the fact that is a little different than hearing the witnesses, from reading the record I think that statement might be questioned seriously, but I doubt that it's necessary for me to resolve it, because I think aside from culpability in the matter of the relations which led to the prosecution here, I think there's a substantial and important difference between the two defendants, and I think the Court should take that into consideration.

in assessing the quantum of the punishment here.

In the first place, the defendant Keane has entered a plea of nolo contendere; he's not contending. He did that some time in advance of trial, and as has been pointed out here, he not only entered this plea, but also took the stand and testified for the government. Now, whether the government could have won the case without Mr. Keane or not I don't know. Certainly it was close and hotly contested, and the jury had some difficulty resolving it, and finally came out with a finding of guilty only on the conspiracy count, but at any rate, he gave his testimony. From the remarks which I understood Judge Black made, although it is not in the transcript, the one I received, he thought Mr. Keane had told the truth, substantially, on the witness stand, and Mr. Allen had not, and apparently the jury took that view of it, because if they had believed Mr. Allen they would have promptly returned a verdict of not guilty, so here I think we have a defendant not only gambling on the result, but taking the stand and giving what the presiding judge and the jury apparently considered was false testimony, which made him guilty of perjury as well as the other offense for which he was being tried.

In this matter I recall, in connection with Judge Black's remark with regard to gambling on the result of the jury, I recall I rather reluctantly permitted both of the defendants to enter pleas of nolo contendere, and that came about under the circum-

stances that developed, but I made it clear that it was my conception of the plea that it gave me full authority to impose any punishment up to the full maximum provided by the statute, including confinement, and after that very unequivocal declaration on my part, Mr. Keane permitted his plea to stand, and Mr. Allen withdrew his plea, and right here in this court room his attorney from Butte, I haven't his name in mind right now—Emigh—virtually asked the court if the plea of nolo contendere were to stand, there would be no confinement imposed, and I told him I wouldn't give him that assurance, that I wished to reserve the right to impose anything up to the full maximum; then he asked for the right to withdraw the plea and it was withdrawn, and the defendant Allen went to trial. I've said before, and I'll say it again, I haven't the slightest disposition to penalize any defendant for standing trial; that's not only his privilege, but his right under the American system, and I would never penalize a defendant because he had stood trial and was convicted in the process that we accord people accused of crime, but when it comes to the matter of grace, which clemency is when extended to a defendant convicted of an offense, when it comes to the matter of grace, then I think the Court can take into consideration that the defendant has shown a spirit of penitence by entering a plea, and that he's shown a disposition to try to make restitution for the wrong he's done by aiding the government in the prosecution of other defendants in the case.

Now, there was quite a bit said at one stage of this case about Mr. Keane having been drinking heavily at the time of these transactions which led up to the prosecution. I'm unable to say from the knowledge I have whether he drank because he was in trouble, or got in trouble because he drank, and that's very difficult to determine in most of these cases where this sort of thing occurs, but at any rate, I think there was periods of time when he was drinking so excessively as not to be in full possession of his faculties, and I think that was an element here, and while of course drinking doesn't excuse an offense, I think it's something the court can properly take into consideration in matters of this sort, and then without unduly prolonging this, I think a fact I should consider and did consider in permitting the plea to be entered here, we have a professional man, and it doesn't make any difference to me whether he is a doctor, lawyer, or any other profession, he depends upon his profession for his livelihood. A lawyer or a doctor or dentist who has taken away from him his power to practice his profession as a usual thing is destroyed so far as making a living is concerned, so I think that is a thing that the court may properly take into consideration.

I do think this is a situation where there should be some punishment. I know Mr. Keane isn't able to pay a fine at this time, but I'm going to impose one, and leave it to the probation officer to say how soon and in what amounts he must pay it. I don't want it to interfere with his reformation, and I'm

sure the probation officer will not permit it to do so, but I think he ought to feel the bite a little for what he's done. Of course, it has been a tremendous setback now, but without prolonging this further, upon the plea of nolo contendere of the defendant Keane, it is the judgment of the court that he is guilty of the offense charged in—now, let's see, as to him, all of the counts stand, do they not, Mr. Stocking?

Mr. Stocking: I think we had dismissed count six.

The Court: Yes, I have that situation in mind.

Mr. Stocking: That count was dismissed; it was re-instated as to the defendant Allen only.

The Court: Well, it is the judgment of the court that he is guilty of count 1 of the indictment in this case, and that he be punished by payment of a fine of \$1500.00. The imprisonment portion of the sentence, however, the imposition of any confinement under this sentence, will be stayed and suspended and the defendant will be placed on probation for a period of four years. In addition to the usual conditions of probation the court will impose these special ones, that he pay the \$1500.00 fine in such installments and at such times as he is able to do in the judgment of the probation officer, and that he refrain from drinking intoxicating liquor during the first two years of the probationary period. Now, the same sentence will be imposed as to counts 2, 3, 4, 5 and 7, the sentences to run concurrently under the same conditions.

Now, as to the defendant Grismer, as I intimated

before, Judge Black, the probation officer, and I think even the attorneys for the government will concede that he was sort of led into this, and didn't know just all of these manipulations that were going on, I think he was used, and got into an unfortunate situation here. Is there only one count remaining as to him?

Mr. Stocking: Count 7.

The Court: Upon his plea of nolo contendere, then, it is the judgment of the court that he is guilty of count 7 of this indictment, but the imposition of sentence will be stayed and suspended, and the defendant will be placed on probation for a period of two years. Is there anything else, then, gentlemen? Each of you, I assume, will see Mr. Swain, the probation officer, before you leave here today.

Mr. Hawkins: The bonds are released?

The Court: Yes; are each of these men out on bond?

Mr. Hawkins: Yes.

The Court: The bond of each of them will be exonerated.

Mr. Herman: Your Honor, Mr. Munter is always thinking about money matters; we'd better clear this up; the total fine is \$1500.00, and the term of probation runs concurrently?

The Court: Yes, I think I'd better clear that situation up. The court will impose a fine of \$1500.00 under count 1; under the other counts no fine will be imposed; the probation period will be four years, to run concurrently under all counts

of the indictment, but there's only one fine, a fine of \$1500.00 under count 1. I appreciate your calling that to my attention.

### Reporter's Certificate

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify: That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on August 5, 1949, at Spokane, Washington. That the above and foregoing contains a full, true and correct transcript of the proceedings had therein.

Dated this 10th day of August, 1949.

STANLEY D. TAYLOR,  
Official Court Reporter.

[Endorsed]: Filed Aug. 10, 1949.

United States District Court for the  
Eastern District of Washington  
No. C-7975

UNITED STATES OF AMERICA,

vs.

FRANCIS CLAYTON KEANE.

JUDGMENT AND ORDER OF PROBATION

On this 5th day of August, 1949, came the attorney for the government and the defendant appeared in person, and by his attorneys, Wm. H. Langroise, H. E. T. Herman and R. S. Munter.

It Is Adjudged that the defendant has been convicted upon his plea of nolo contendere of the offenses of Using the Mails to Defraud (Sec. 338, Title 18 U. S. C. A.), Fraud in Sale of Securities (Sec. 77(q) Title 15 U. S. C. A.) and Conspiracy (Sec. 88, Title 18 U. S. C. A.) as charged in Counts 1, 2, 3, 4, 5, and 7 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that defendant pay a fine to the United States in the sum of \$1500.00 on Count 1, that no fine be imposed on Counts 2, 3, 4, 5, and 7, and that imposition of any imprisonment sentences

on all Counts, to-wit: Counts 1, 2, 3, 4, 5, and 7 of the Indictment be suspended and defendant placed on probation in the custody of the United States Probation Officer for a period of Four Years on each count, such periods of probation to run concurrently, upon the Special Condition, that he pay the fine imposed on Count 1, in such amounts and at such times as the Probation Officer shall direct, and the further special condition that he shall refrain from drinking intoxicating liquor for the first two years of his probation.

It Is Further Ordered that during the period of probation the defendant shall demean himself as a law-abiding, orderly, industrious citizen and observe such conditions of probation as the probation officer may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It Is Further Ordered that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

SAM M. DRIVER,  
U. S. District Judge.

[Endorsed]: Filed Aug. 5, 1949.

United States District Court for the  
Eastern District of Washington  
No. C-7975

UNITED STATES OF AMERICA,

vs.

JOSEPH VALENTINE GRISMER.

JUDGMENT AND ORDER OF PROBATION

On this 5th day of August, 1949, came the attorney for the government and the defendant appeared in person and by his counsel Wm. S. Hawkins.

It Is Adjudged that the defendant has been convicted upon his plea of nolo contendere of the offense of Conspiracy in violation of Sec. 88, Title 18 U. S. C. A. as charged in Count 7 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that imposition of sentence be and hereby is suspended and defendant placed on probation in the custody of the United States Probation Officer for a period of Two Years.

It Is Further Ordered that during the period of probation the defendant shall demean himself as a law-abiding, orderly, industrious citizen and observe such conditions of probation as the probation officer may prescribe. Otherwise the defendant may be

brought before the court for violation of the court's orders.

It Is Further Ordered that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer..

SAM M. DRIVER,  
U. S. District Judge.

[Endorsed]: Filed Aug. 5, 1949.

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[Title of Court and Cause.]

ORDER PERMITTING WITHDRAWAL AND  
TRANSMITTAL OF ORIGINAL EXHIBITS

Upon application of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Ordered that the Clerk of this Court be and he is hereby permitted to withdraw all of the original exhibits in said action and to certify and transmit the same as a part of the Transcript of the Record to the Clerk of the United States Court of Appeals for the Ninth Circuit.

Dated at Spokane, Washington, August 13th, 1949.

SAM M. DRIVER,  
Judge.

Presented by:

R. MAX ETTER.

[Endorsed]: Filed Aug. 13, 1949.

[Title of Court and Cause.]

**ORDER EXTENDING TIME FOR  
FILING TRANSCRIPT**

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding ninety (90) days from the date of filing Notice of Appeal of defendant and appellant Allen in said action, to-wit, July 25, 1949.

Dated at Spokane, Washington, August 13th, 1949.

**SAM M. DRIVER,**  
**Judge.**

Presented by:

**R. MAX ETTER.**

[Endorsed]: Filed Aug. 13, 1949.

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[Title of Court and Cause.]

**DESIGNATION OF RECORD ON APPEAL**

To A. A. LaFramboise, Clerk of the District Court aforesaid:

Defendant and appellant above named, James

Anthony Allen, hereby designates the following portions of the record, proceedings, and evidence to be contained in the record on appeal herein, to-wit:

Indictment.

Bail Bond of Defendant Allen in the sum of \$2,000, filed May 6, 1948.

Bail Bond of Defendant Allen in the sum of \$2,000, filed May 9, 1949.

Motion of Defendant Allen to dismiss Count VII of Indictment.

Motion of Defendant Keane to make Indictment more definite and certain, adopted by Defendant Allen on hearing of motions August 23, 1948.

Clerk's Memorandums of August 23, 1948, showing pleas of all defendants entered to Indictment.

Statements of Attorneys Herman, Langroise and Munter made to Court December 8, 1948, on withdrawal of plea of not guilty by defendant Keane and substitution of plea of nolo contendere to each of seven counts of indictment, as contained in stenographic notes filed December 10, 1948.

Stenographic notes of January 13, 1949, of proceedings on withdrawal of plea of not guilty by defendant Allen and substitution of plea of nolo contendere, filed January 31, 1949.

Stenographic notes of March 21, 1949, on withdrawal of plea of nolo contendere by defendant Allen and substitution of plea of not guilty by defendant Allen to all counts of Indictment, filed March 25, 1949.

Motion of defendant Allen to strike exhibits and testimony.

Defendant Allen's Requested Instructions Nos. 1 to 16 inclusive.

Motion of defendant Allen for judgment of acquittal at close of plaintiff's case.

Motion of Defendant Allen for judgment of acquittal at close of all the testimony of plaintiff and said defendant.

Verdict of Jury.

Motion of defendant Allen for judgment of acquittal or for new trial on Count VII of Indictment.

Motion of defendant Allen in arrest of judgment.

Judgment of Conviction of Allen on Count VII of Indictment.

Bail Bond of defendant Allen for \$15,000 pending determination of appeal.

Notice of Appeal.

Original Reporter's Transcript of Evidence or Proceedings on trial of defendant Allen, and court's statements on sentencing of Allen and Keane, properly certified by the Clerk, excluding closing arguments of Counsel to Jury, and examination of Jurors.

Original Exhibits.

Order permitting withdrawal and transmittal of original exhibits.

Journal Entries, including those made on August 5, 1949.

Judgment of Conviction of Defendant Keane.

Judgment of Conviction of Defendant Grismer.  
Order extending time to file Transcript of Record  
and docket cause in appellate court.

This designation of record on appeal and acknowledgment of service.

Certificate of Clerk.

Dated August 12, 1949.

E. MAX ETTER,

J. F. EMIGH,

J. A. MURRAY,

THERRETT TOWLES,

WILLIAM E. CULLEN, JR.

Attorneys for Defendant and Appellant, James  
Anthony Allen.

[Receipt of copy acknowledged.]

[Endorsed]: Filed Aug. 15, 1949.

[Title of Court and Cause.]

**ORDER EXTENDING TIME FOR  
FILING TRANSCRIPT**  
(Oct. 17, 1949)

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding thirty (30) days from the date of October 22, 1949, until November 21, 1949.

Dated at Spokane, Washington, October 17th, 1949.

**SAM M. DRIVER,**  
**Judge.**

Presented by:

**WM. E. CULLEN.**

[Endorsed]: Filed October 17, 1949.

[Title of Court and Cause.]

**ORDER EXTENDING TIME FOR  
FILING TRANSCRIPT**  
(Nov. 15, 1949)

Good cause appearing therefor, now on motion of R. Max Etter, Esq., of counsel for defendant and

appellant James Anthony Allen in the above entitled action:

It Is Hereby Ordered that the time for filing the Transcript of the Record in said action and docketing the cause in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended for a period not exceeding thirty (30) days from the date of November 21, 1949, until December 21, 1949.

Dated at Yakima, Washington, November 15, 1949.

SAM M. DRIVER,  
Judge.

Presented by:

R. MAX ETTER.

[Endorsed]: Filed November 15, 1949.

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[Title of Court and Cause.]

**SUPPLEMENTAL DESIGNATION OF  
RECORD ON APPEAL**

To A. L. LaFramboise, Clerk of the District Court  
aforesaid:

Defendant and appellant above named, James Anthony Allen, hereby designates the following additional portions of the record, proceedings and evidence to be contained in the record on appeal herein, to-wit:

Motion of Defendant Keane to make indictment  
more definite and certain

Order on Keane's Motion for Bill of Particulars

Bill of Particulars

Dated December 12, 1949.

R. MAX ETTER,

WILLIAM E. CULLEN, JR.,

J. F. EMIGH,

J. A. MURRAY,

THERRETT TOWLES,

Attorneys for Defendant and Appellant, James  
Anthony Allen.

Service of the foregoing Supplemental Designa-  
tion of Record on Appeal, by receipt of a true copy  
thereof, is hereby accepted this 12th day of De-  
cember, 1949.

HARVEY ERICKSON,

By L. WINDHAM,

Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 12, 1949.

In the District Court of the United States for the  
Eastern District of Washington, Northern Di-  
vision

No. C-7975

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES ANTHONY ALLEN, FRANCIS CLAY-  
TON KEANE, and JOSEPH VALENTINE  
GRISMER,

Defendants.

RECORD OF PROCEEDINGS AT THE TRIAL  
OF JAMES ANTHONY ALLEN

Be It Remembered, that on the 6th day of June, 1949, the above entitled cause came regularly on for trial of the defendant James Anthony Allen in the above Court at Spokane, Washington, before the Honorable Lloyd L. Black, a Judge of said Court, sitting with a jury.

The plaintiff appearing by Harvey Erickson, United States Attorney for the Eastern District of Washington, of Spokane, Washington, and Donald J. Stocking, attorney for the Securities and Exchange Commission, of Seattle, Washington.

The defendant James Anthony Allen appearing personally and [60\*] by his attorneys, R. Max Etter, William E. Cullen, Jr., and Therrett Towles, of

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\*Page numbering stamped at bottom of page of original  
Reporter's Transcript.

Spokane, Washington, J. F. Emigh, of Butte, Montana, and James A. Murray, Jr., of Los Angeles, California, and Washington, D. C. [61]

\* \* \*

Mr. Erickson: May it please the Court, members of the jury: In order that you may have some preview and premonition of what this case is about, it will be my purpose to picture to you briefly just what the case is about, what the government expects to prove, and the order of proof which will be [74] introduced here in court for your consideration.

Now, as the court has told you, the grand jury for the Eastern District of Washington returned an indictment against the defendant James Anthony Allen, along with two others, Francis Clayton Keane and Joseph Valentine Grismer, whose cases you are not to consider. You are merely considering the case against James Anthony Allen in this trial.

The first count of the indictment is a description of what the charge is. It is called a mail fraud count. It is a charge of using the mails to perpetrate fraud. The charging part of the indictment as returned by the grand jury reads as follows:

“Prior to June 1, 1945, and continuing to the date of this indictment,” that was May 6, 1948, when the indictment was returned, “the defendants James Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, devised and intended to devise the following device, scheme and artifice to defraud purchasers and prospective purchasers of stock of Lucky Friday Extension Mining Company and Pilot

Silver Lead Mines, Inc., both Idaho corporations, said corporations hereinafter sometimes referred to as "Extension" and "Pilot" respectively, and said purchasers hereinafter sometimes referred to as investors, and to obtain money and property by means of false and fraudulent pretenses, representations and promises: That said defendants would and did promote and [75] organize Extension and Pilot and issue a large portion of the stock of these corporations to themselves, but would and did conceal the fact that defendant Allen was a promoter of these corporations or was to receive any part of the stock to be taken by defendants; that defendants in order to conceal the true amount of stock issued to them would and did cause large blocks of stock to be issued to Elmer E. Johnston of Spokane, Washington, and James E. Gyde of Wallace, Idaho, under the pretense that such stock was in payment of attorneys' fees, but with the secret arrangement that a portion of such stock or the proceeds from its sale would be turned back to defendants; that defendants would and did cause these corporations to sell stock to investors upon the representation that the proceeds therefrom would be used by these corporations for the exploration and development of the mining properties of Extension and Pilot respectively; that defendants would not maintain proper books and records of account, but would and did conceal from the stockholders of said corporations information concerning the receipt and expenditure of moneys of these corporations; that defendants would and did appropriate and divert from these corporations a large amount of such

corporate moneys to their own use and benefit; that further, defendants, in order to create an appearance of mining activity on the part of these corporations and to increase the market value of defendants' promotion stock of Extension and Pilot, would and did spend a small portion of the funds belonging to these corporations on the mining properties of Extension and Pilot, whereupon defendants would and did dispose of their promotion stock by selling it on the market to the investing public, without disclosing the fact that large amounts of the funds of these corporations had been appropriated and diverted to defendants' own use and benefit; and that defendants would and did defraud purchasers of stock of Extension and Pilot by means of deceptive, misleading, false and fraudulent pretenses, misrepresentations and promises, well knowing at the time that such pretenses, representations and promises were and would be false when made, including among others, and in addition to those heretofore specified and in the manner heretofore described, representations and promises: as to the use of the net proceeds to be received from the sale of Extension and Pilot stock by these corporations; as to the names of the promoters and persons in control of these corporations; as to the fact that the promoters would hold their stock for investment; as to the accounting safeguards which would insure the proper use of the funds of these corporations; and as to the amounts of stock issued to promoters and for legal services."

And then the second paragraph is:

"That on or about September 20, 1945, at Spokane, in the Northern Division of the Eastern District of Washington, and within the jurisdiction of this court, the defendants James [77] Anthony Allen, Francis Clayton Keane, and Joseph Valentine Grismer, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, did knowingly cause to be delivered by mail, according to the directions thereon, a certain letter addressed to E. J. Gibson & Co., 5 Wall Street, Spokane, Wash., said letter having theretofore on or about September 19, 1945, been placed or caused to be placed by the said defendants in an authorized depository for mail matter to be sent or delivered by the Post Office establishment of the United States according to the directions thereon; all of which acts of said defendants were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided."

That is the first count, which embodies the fraudulent scheme. The second count charges the same fraudulent scheme, but that a letter was mailed on June 13, 1946, and received thereafter by Ben Redfield, the broker in Spokane. The evidence will show that E. J. Gibson and Company are Spokane brokers, and sold a considerable portion of stock of both Pilot and Extension to the investing public, as did Ben Redfield, who is also a broker in the Radio Central Building in Spokane, Washington.

Count three charges the mailing of another letter to perpetrate the same scheme to defraud, to E. J. Gibson on May 25, 1946. The fourth count is a violation of the Securities [78] Act, using the mail for the sale of securities, fraud in the sale of securities, and the letter is charged to have been mailed on the 8th of August, 1945, to Edwin LaVigne & Company, who is a stockholder in Spokane, Washington.

Count 5 charges the same violation of the Securities Act, using the mails for the fraudulent sale of securities, the letter being mailed to E. J. Gibson on May 28, 1946. Count six charges a violation of the Securities Act, and the mailing of a letter to Edwin LaVigne on June 12, 1946.

The seventh count in the indictment is a conspiracy count charging the defendants with conspiring, combining, confederating and agreeing with one another to perpetrate these fraudulent schemes which are set forth in detail in count one, so that there are seven counts to this indictment, the first three are the charges of using the mails to perpetrate fraud, the second three counts are using the mails in violation of the Securities Act, and the selling of securities through fraudulent means, and the seventh count is a conspiracy count charging that all the defendants conspired to violate both the mail fraud statute and the Securities Act, by using the mails to sell and deliver the securities sold in pursuance of this fraudulent scheme which I have mentioned.

The elements of the fraud as set forth in the indictment are very few. I think there are six of them. The first element of fraud is the fact that Allen was a promoter was [79] concealed from the public. The evidence in this case will show that Allen was an actual promoter of both these companies, conceived in his own mind and in the mind of Clayton Keane, another of the defendants, but that his name was not used for the reason that in 1943, June, 1943, an injunction was obtained against Allen by the Securities and Exchange Commission of Seattle, Washington, prohibiting Allen from promoting or organizing any companies, and any company which he promoted or was engaged as an officer in the promotion of, could not sell securities and would be prohibited from the sale of securities, and that was the reason for concealing the fact that he was a promoter.

The second element of fraud is the concealing of the issuance of stock to Gyde and Johnston and the kick-back. The prospectuses will show that certain large amounts of stock were issued to James E. Gyde, a Wallace lawyer, and Elmer Johnston, a Spokane lawyer; that these statements in the prospectuses were untruthful, in that the amounts of stock that these two lawyers were to get were not set forth with truth and veracity, but that although these lawyers got this stock, they kicked back the major portion of it to the promoters of the company for sale, and they only got a small part of that which the prospectus said they would get. The pros-

pectus for each of these companies is a statement which the companies must file when they sell securities, telling [80] about the nature of the company, the financial structure, the officers, and what the company proposes to do, what the companies propose to do with the investors' money.

The third element of fraud is that the representation was made by these defendants that the proceeds would be used for Lucky Friday Extension and Pilot only. The evidence will show that although these representations were made in the prospectuses to the investors, that the great majority of the money raised by Lucky Friday Extension and Pilot Silver Lead was embezzled by the defendants, and the evidence will point conclusively to the defendant Allen being one of the primary embezzlers of this money; and the next statement of fraud is that the fact was concealed from the stockholders that the receipt and expenditure of monies of these corporations, and a lack of accounting safeguards—the statement was made in the prospectus that these stockholders would receive an accounting of the receipt and expenditures of the monies, and the proof will show a total lack of any accounting safeguards, and a very loose way of handling the money; in fact, no books were created, and the money was handled mostly in the form of cancelled checks, without any books being set up.

The fifth element of fraud is the embezzlement of corporate monies, which has previously been mentioned, and the sixth element of fraud is that

they did sell promotion stock to the investing public without disclosing the fact that the [81] previous embezzlements had been made.

Now, the Lucky Friday Extension Company was created first along about the summer of 1945. In January, 1946, the Pilot Silver Lead Company was formed, but the money was stolen and embezzled by the defendants just as fast as it was taken in by the companies. Now, they got certain large blocks of promotion stock, but when they sold their promotion stock, and when they sold the second offering of Lucky Friday Extension stock, the next year, there was one offering made right after the company was organized, and then one about six months later, no disclosure was made to the investing public in the prospectus or by any statement that any of this money had been taken, removed, embezzled or misappropriated from the company, whereas in truth and fact a large portion of the money had already been stolen or embezzled from the company.

Now, getting back to the Lucky Friday Extension Mining Company, it was incorporated in 1945. The promoters were listed as J. V. Grismer, William E. Mullan, and Glynn David Evans. William E. Mullan I believe is deceased; the other two are alive. The brief set-up of the stock is that the three incorporators were each given 100 shares, making a total of 300 shares; Grismer was issued 1,229,700 shares for certain mining claims which he turned over to the company; 300,000 shares was given to the defendant Keane as attorney's fees; 200,000 shares

was given to Elmer Johnston of Spokane as [82] attorney's fees, and Glynn Evans, one of the incorporators, was given 10,000 shares for services, William Mullan, deceased, was given 10,000 shares for services, and the first public offering was July 1, 1945; one million shares were sold to the public through these various brokerage houses which I mentioned a short time ago; that was sold to the public for twelve and a half cents a share, to net \$100,000, and it did net \$100,000, all that million shares were sold to the public. The next public offering was January, 1946, and 300,000 shares were sold. Then the price was thirty-two and a half cents per share; the 300,000 shares netted \$78,000. Well, that made a total, then, up to January, 1946, of 3,050,000 shares of stock being issued in the Lucky Friday Extension.

There remained 450,000 shares of treasury stock, and in October, 1947, Allen issued, or the board issued to Allen, or the board of directors, 400,000 shares to him at that time.

Now, as to the organization of this Lucky Friday Extension Mining Company, the evidence will show that Keane and Allen were the real promoters of this company, and the promotion of these companies was discussed first in the hotel in Wallace between Keane and Allen, and then others entered into the company. The chief bookkeeper, or the girl that handled the workings or the bookkeeping and the financial part of the company was Irene Vermillion, who will be a witness in this case, Mr. Keane's sec-

retary. She will testify as to the [83] exhibits, the checks and the records and so forth, and the evidence will further show that Mr. Allen, the defendant Allen, was active in preparing the prospectus, that he contacted Elmer Johnston, gave Johnston information as to material to put in the prospectus, that he was considered and known to be an actual promoter of this Lucky Friday Extension Company.

The Pilot Company, Pilot Silver Lead, was organized I believe in the early part of 1946, and that was the same set-up as the Pilot, there were 3,500,000 shares in each of these companies, and the incorporators were Glynn Evans, who was likewise an incorporator in the Lucky Friday Extension; Beatrice McLean is a stenographer or bookkeeper in Wallace that works in the Callahan Consolidated, and Irene Vermillion, the defendant Keane's stenographer or secretary. These two girls and Evans were the incorporators. They each received 100 shares, or 300 shares; 900,000 shares was given to the defendant Grismer for claims; 650,000 shares were given to Keane for the Cincinnati and Phelan mining claims; 50,000 shares to Elmer Johnston, Spokane lawyer, as attorney's fees, and 150,000 shares to Gyde for attorney's fees, and of course Gyde kicked back part of that stock later, as the same kick-back was worked in the Lucky Friday; 20,000 shares was given to Emeline Phelan; that left a total issued, before the public offering, of 1,770,300 shares. Then there was sold [84] at public offering one million shares at twelve and a half cents, the

same figure that the Lucky Friday Extension brought, to net 10 cents a share, or \$100,000. That made 2,770,300 shares issued through 1946. Then in August 7, 1947, they had a directors' meeting, and 25,000 shares were issued to William Mullan. October 9, 1947, 500,000 shares were issued to the defendant J. A. Allen, per the minutes of the directors' meeting on this October meeting.

Now, speaking about the embezzlements, the evidence will show that the total embezzlement of Lucky Friday Extension is as follows: \$113,000 of the embezzled funds of Lucky Friday Extension were given to or put in the bank account of Montana Leasing or Lexington Silver Lead between July 28, 1945, and May 17, 1946, a period of about ten months. The evidence will show that Montana Leasing, later Lexington Silver Lead, was a Montana corporation and operates near Neihart, in the northwest part of the State of Montana, and it's wholly removed and not remotely connected with the Pilot or the Extension, which are near Mullan, Idaho. \$10,000 was diverted to Delaware Mines on October 7, 1945. Now, the evidence will show that Keane and Allen, the defendants Keane and Allen, were the interested parties or the partners running Montana Leasing or Lexington Silver Lead where this money went. The two bank accounts will be brought in evidence here by the Securities and Exchange accountant, Mr. Denney, and it will show that as [85] soon as money was received from Lucky Friday Extension, it immediately appears and goes

into the Montana Leasing or Lexington Silver Lead account of this Montana mining operation.

The total embezzlements from Pilot Silver Lead show much the same story; \$61,300 went to Montana Leasing or Lexington Silver Lead between May 31, 1946, and August 23, 1946, a period of about three months; \$15,000 of the embezzled funds appeared in the Coeur d'Alene Consolidated account; \$10,000 to Independence Lead on June 25, 1946, and \$3,000 of the embezzled Pilot funds then went to Extension on July 8, 1946; \$1200.00 to the War Eagle Mining Company on June 28, 1946, and July 31, 1946; so I believe if I've added it correctly, the total embezzlements in Pilot are \$90,500. The total embezzlements from Lucky Friday Extension are \$123,000, and from Pilot, \$90,500, or approximately those figures. The exact figures will be given to you as the accountants testify.

Looking at it from another standpoint, as to the total amounts of money, the evidence will show that the investors paid for Lucky Friday Extension stock \$222,500. This figure of course includes the amount paid, plus the brokerage fees. The investors paid for Pilot Silver Lead \$125,000; the total amount raised was \$347,500. The evidence will likewise show that in the sale of the promotion stock to the public, \$145,000 was raised, or a total amount raised was \$492,500 on the stock of these two mining companies, and of the \$347,500, [86] \$69,500 was the underwriters' commission. The total embezzlements amounted to \$213,500, if these figures are correct.

Now, as to these mailings, the evidence will show that the defendant Allen did not himself mail one single letter. The mailings were accomplished by Irene Vermillion, Keane's secretary. The evidence will show that Allen and Keane directed her to perform the duties that she was told to perform in these mailings; that they understood that these public offerings were being made, that they understood that the mails would have to be used for these purposes, and gave her directions and instructions that she was to transmit the stock and letters of transmittal in this way.

The evidence will show that when Pilot Silver Lead was formed, the defendant Allen was one of the principal—was the principal promoter in the Pilot Silver Lead; he arranged with a woman, a lady from Wallace who is coming here to testify, Mrs. Emeline Phelan, who will testify that the preliminary arrangements were made by the defendant Allen who came to her house to buy these mining claims from her, and that she sold the claims to the defendant Allen and went up to his office and there transacted the business. Mr. Herrick, another witness coming from the state of California to testify, will tell the same story about the defendant Allen coming to him and making arrangements to buy claims from him that went into the Pilot group. The evidence from these two witnesses will [87] place the defendant Allen definitely in the promotion of the Pilot Silver Lead. The evidence from Keane, from Irene Vermillion, from Elmer Johnston, from

Arthur Lakes, and other witnesses will put the defendant Allen definitely in the promotion and organization of the Lucky Friday Extension Mining Company.

As to the defendant Allen signing any checks from the Pilot Silver Lead or the Lucky Friday Extension, I do not believe his name appears on a single, solitary check that he signed for any of these monies, but on August 7, 1945, the evidence will show that he went up and had a \$10,000 check to Delaware Mines made out to him, and he took that money and it appeared in the Delaware account. The evidence will show that Allen is an active partner in the Delaware Mines; also that on August 7, 1945, a \$5,000 check was made out by Irene Vermillion, the same as the \$10,000 check, and given to the defendant Allen, and Irene Vermillion put on the check stub, "given to J. A. Allen" and marked the date on it, initials "J.A.A." The evidence will show that these checks were made out on a check protector in the Callahan Consolidated office. The evidence will further show that defendant Keane was not in the town of Wallace that day, but was on a fishing trip up the St. Joe River which he attended with some of the directors of the Hecla Mining Company after a meeting in Spokane. The evidence will show that Allen was registered at the Samuels [88] Hotel in Wallace on that day of the handing of the checks to him by Irene Vermillion in her office.

Now, the individual witnesses that are coming

here to testify, Irene Vermillion, as I told you, has the company records, has the cancelled checks. By the way, the company didn't keep books. The books had to be entirely reconstructed, or constructed, by Mr. Denney, the accountant of the Securities and Exchange Commission, who will be a witness here in court and testify what he did to make the investigation of the affairs of the company, the affairs were such that nothing could be made out of them, and the evidence will show that Irene Vermillion acted under the directions of Keane and Allen and that they never specifically gave her directions and always postponed the setting up of the books and the corporate records of the company. She will identify the monies received by both the Pilot and the Extension, trace the monies into their bank accounts. She will trace the outgo of monies into the Lexington Silver Lead or the Montana Leasing, the Montana properties, and she will put in evidence or identify for evidence the necessary paper documents.

Mr. Denney, the accountant for the Securities & Exchange Commission, from the documents given him by Irene Vermillion has prepared schedules for your understanding which will be offered at the appropriate time to help you trace this stock [89] and the monies from these promotions, and how they were spent, and what happened to them. The witnesses, the stockbrokers from Spokane will appear and identify the letters and tell about their part in the transactions, and I'll not detail that to

you because that testimony is brief and will properly come from them when they get here to testify.

The government in this case will call the defendant Keane as a witness, who will first admit his part of the embezzlement, and will tell that he has appropriated and taken a large portion of this money, and he will tell about his acquaintanceship with Allen, their working together in the company; that the purpose of starting the Pilot Silver Lead and the Lucky Friday Extension was to get money, get promotion money so that they could take it over and use it at their property at Neihart, Montana, the Montana Leasing and Lexington Silver Lead. The defendant Keane will further testify as to the expenditure of this money. Some went to the Montana Leasing, the great majority of it went to Montana Leasing or Lexington. Much of the monies from the Montana corporation went into Allen's personal account, some for hotels, and cash, and grocery bills, and life insurance, and gambling, even a check in there to the Spokane Racing Association on these Lexington funds.

The evidence will further show that Allen and Keane are not now good friends, but at the time were very close friends, [90] worked in concert and together in the operation of these companies. They have since had a falling out, and are not on the best of terms at the present time.

The government will also call the defendant Joe Grismer in this case, who will admit that he was an incorporator of the Lucky Friday Extension Mining

Company, president of the company. The evidence will further show that Mr. Grismer is a man of limited education, a practical miner. He will tell about the activities of Mr. Allen, the defendant Allen, in the promotion of these companies, and the disposition of his stock, how Allen sold his promotion stock, or the stock that was issued to him.

The defendant Grismer and the defendant Keane's cases have been disposed of, and you are not to consider them. Their testimony will be before you as other witnesses in the case.

The Court: What is the defendant's desire as to an opening statement at this time?

Mr. Emigh: The defendant will reserve the opening statement until the close of the government's case.

The Court: All right. The government may call its first witness.

Mr. Stocking: Call Irene Vermillion. [91]

### IRENE VERMILLION

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

- Q. Will you state your name, please?
- A. Irene Vermillion.
- Q. And where do you reside?
- A. Wallace, Idaho.
- Q. Are you married? A. Yes.

(Testimony of Irene Vermillion.)

Q. What is your husband's name?

A. Joe Vermillion.

Q. And where is he employed?

A. He works for the Idaho Lumber Company.

Q. Do you have any family, Mrs. Vermillion?

A. We have two boys, one 10, one almost 13.

Q. How long have you resided in the vicinity of Wallace, Idaho? A. Practically all my life.

Q. What is your present occupation?

A. I'm secretary to the law firm of Keane & McCann, and court reporter for Judge Featherstone in the District Court at Wallace.

Q. And by Keane, you're referring to F. Clayton Keane, who is named as one of the defendants in this action? A. Yes. [92]

Q. How long have you been the secretary to Mr. Keane? A. Since May 1, 1944.

Q. And how long have you been acting as a court reporter for Judge Featherstone?

A. Since June 1, 1945.

Q. Are you familiar with the corporation known as the Lucky Friday Extension Mining Company?

A. Yes.

Q. And where did you hear of that company?

A. The Articles of Incorporation were drawn in Mr. Keane's office, and—

Q. Were you employed there at that time?

A. Yes, I was.

Q. And do you know who the organizers of that company were?

(Testimony of Irene Vermillion.)

Mr. Emigh: We object as calling for a conclusion of the witness; the Articles of Incorporation are the best evidence.

Mr. Stocking: She can state if she knows.

The Court: She may first state if she knows.

A. I don't know whether I understand just exactly.

Q. Do you know the names of the persons who were the organizers of that company?

A. Do you mean the incorporators, is that what you mean?

Q. Yes.

A. There were so many companies I'm afraid to say and not be [93] sure unless I had the Articles to look at; I think it was Mr. Grismer and Mr. Evans and Mr. Mullan. I may be wrong in that. I think that's right.

Q. And were you present when there was some discussion of the organization of this company?

A. I was present when the Articles of Incorporation were drawn, and—

Q. Who else was present at that time?

A. I don't remember just exactly if Mr. Keane and Mr. Allen were both there at the time they were dictated, but I know that Mr. Allen and Mr. Keane both were there after they were typed, and they were read by both of them.

Q. And approximately when was that, what month and year?

A. Oh, let's see; I can't remember whether those

(Testimony of Irene Vermillion.)

were typed up in June, either the last of May or June in 1946, or perhaps the first part of July.

Q. Now, this is the Extension Company, correcting the date there, 1946?

A. '45, I'm sorry.

Q. You're definite about that date?

A. Yes; I'm not definite about the month. It was sometime in the spring that they were drawn up.

Q. And who prepared the Articles of Incorporation, who typed them? A. I typed them.

Q. Now, were you employed by this corporation, or did you have a position in this corporation, the Extension Company?

A. I wasn't employed in the sense of receiving a salary, if that's what you mean. I acted as more or less assistant secretary, just opening the mail and giving the lists of the stock to Mr. Evans, or turning the stock over to him that came in registered, and so on.

Q. And who is Mr. Evans?

A. He was Mr. Glynn Evans, who did the stock transfers and who was also one of the incorporators.

Q. And who made the arrangements with you to do this work for this company?

A. Mr. Keane and Mr. Allen.

Q. And what were your duties besides opening the mail and taking out the—did you say the checks?

A. That's right; I said the lists of people who were purchasing stock.

(Testimony of Irene Vermillion.)

Q. Yes, and this was in connection with an offering of the stock which was made, is that correct? A. That's right.

Q. What other duties did you have in connection with the functions of this company, the Extension Company?

A. Well, as far as the Extension was concerned, I didn't do the original issue or the original offer, I didn't work on that, with the exception of, oh, occasionally Mr. Allen [95] would call, and I think that this is after the original issue, he would call and have me issue so much stock out of certificates that they had, and I would send them to them, or he would pick them up, or occasionally Mr. Keane would have me issue a few certificates. Mr. Evans did all the actual work of making out the certificates.

Q. Mr. Evans did that?

A. That's right.

Q. And with reference to the checks which were received, do you know who banked those checks?

A. I believe I banked all the checks in the Extension.

(Whereupon, Checks from Gibson & Co. were marked Plaintiff's Exhibit No. 1 for identification.)

(Whereupon, Checks from LaVigne were marked Plaintiff's Exhibit No. 2 for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, checks from Pennaluna were marked Plaintiff's Exhibit No. 3 for identification.)

Q. I'll hand you what has been marked Plaintiff's identification number 1, consisting of a number of checks, and ask you if you can identify those?

A. These were the checks received from the E. J. Gibson Company—

Mr. Emigh: Just a minute; we'll object to that as not responsive to the question. The checks speak for themselves. [96]

Q. Can you identify them, yes or no?

A. Yes, I can. Sorry.

Q. And are these the checks that you referred to previously in your testimony as coming to you through the mail?

A. Part of them, yes. I mean there were others, by that answer.

Q. Yes, and are these part of the checks that you referred to as having banked? A. Yes.

Q. And that was in what account?

A. In the Lucky Friday Extension Mining Company account.

Q. I'll hand you what has been marked for identification Plaintiff's exhibit number 2, and ask you if you can identify those? A. Yes.

Q. And are those also some of the checks which you referred to as having come from the brokers' offices? A. Yes.

(Testimony of Irene Vermillion.)

Q. And I also hand you another bundle of checks which has been marked as Plaintiff's exhibit number 3, and ask you if you can identify those checks?

A. Yes.

Q. Have you—did you examine the endorsements on those checks? A. I did. [97]

Q. And whose endorsement appears on the back of each of those checks in exhibit 1, 2, and 3, if you know?

Mr. Emigh: We think the checks are the best evidence of the endorsements.

The Court: Oh, she may say.

A. Mine.

Mr. Emigh: Exception.

Q. That's your own endorsement, "Irene Vermillion"? A. Yes.

Q. And at whose direction were you acting when you received those checks and endorsed them?

Mr. Emigh: Just a minute; we'll object to that as calling for a conclusion of the witness, in the first place, proper foundation has not been laid in the second place, and if these directions were not given in the presence of the defendant Allen, it would constitute hearsay. No conspiracy has yet been established, and the directions of another alleged co-conspirator would not be now admissible.

The Court: Well, the rule of order as to conspiracy is substantially subject to the Court's discretion. The building can't all be built at once;

(Testimony of Irene Vermillion.)

a brick at a time must be laid. I will overrule the objection.

Mr. Emigh: May we have an exception?

The Court: Exception noted. You may read the [98] question.

(Whereupon, the reporter read the last previous question.)

A. Mr. Keane and Mr. Allen.

Q. And by that, you're referring to the defendant Allen here, and your employer Clayton Keane, who is also a defendant in this action?

A. Yes.

(Whereupon, deposit slips of Extension Company were marked Plaintiff's Exhibit No. 4 for identification.)

Q. Now, I'll hand you what has been marked for identification Plaintiff's exhibit number 4, and ask you if you can identify that exhibit?

A. Yes.

Q. And who prepared that exhibit?

A. You mean who prepared these slips?

Q. Yes.

A. With the exception of one, I believe I prepared them.

Q. They were prepared by you? A. Yes.

Q. And at whose direction were they prepared by you? A. Mr. Keane and Mr. Allen.

Q. And were they prepared on or about the dates that appear on each individual slip? [99]

(Testimony of Irene Vermillion.)

A. Yes.

Q. And at the time that you prepared those slips did you bank the—did you present the slips with the items shown thereon to the banks—

A. Yes.

Q. —to the bank, and make a deposit therein?

A. Yes.

Q. What was the name of that bank?

A. Idaho First National, Wallace Branch.

(Whereupon, check stubs of Extension Company were marked Plaintiff's Exhibit No. 5 for identification.)

Q. I'll hand you what has been marked for identification Plaintiff's exhibit 5, and ask you if you can identify that, please? A. Yes.

Q. And who prepared the information that is contained in that exhibit? A. I did.

Q. And at whose direction were you acting when you prepared that exhibit?

A. Mr. Keane and Mr. Allen.

Q. And were the notations made thereon on or about the dates which appear on the stubs?

A. Yes. [100]

Q. And does that exhibit also pertain to the Lucky Friday Extension Mining Company?

A. Yes.

(Whereupon, checks drawn on Extension Company were marked Plaintiff's Exhibit No. 6 for identification.)

(Testimony of Irene Vermillion.)

Q. I'll hand you what has been marked for identification Plaintiff's exhibit 6, consisting of a number of checks, and ask you if you can identify that exhibit? A. Yes.

Q. And who prepared those checks that appear in that exhibit, Exhibit 6?

A. Why, I believe most were prepared by myself. There may have been one or two that weren't?

Q. And what signatures appear on those checks that are contained in that exhibit?

A. Irene Vermillion, and F. C. Keane.

Q. And did you sign those on which the name "Irene Vermillion" appears? A. I did.

Q. And did you sign any of those on which the name "F. C. Keane" appears?

A. Some of them.

Q. And at whose direction did you sign those?

A. Mr. Keane and Mr. Allen. [101]

Q. And did the checks for the most part which appear—the numbered checks which appear in Exhibit 6, did they come from the check book which is Exhibit 5, of which Exhibit 5 is the check stub?

A. Yes. [102]

\* \* \*

(Whereupon, at 4:30 o'clock p.m., the Court took a recess in this cause until Tuesday, June 7, 1949, at 10 o'clock a.m.)

Spokane, Washington, Tuesday, June 7, 1949,

10:00 o'Clock A.M.

(Second day of trial)

(Testimony of Irene Vermillion.)

(All parties present as before, and the trial was resumed.)

\* \* \*

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

### IRENE VERMILLION

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

#### Direct Examination (Continued)

By Mr. Stocking:

Q. Mrs. Vermillion, when we adjourned yesterday afternoon you had just completed identifying these first six exhibits, that is, stating that you could identify them. Now, will you kindly refer to those exhibits which have [103] been marked Plaintiff's 1 to 6 for identification, and state what each exhibit is, please?

Mr. Emigh: May it please the Court, at this time I would like to make a general objection here, a general and specific objection to these exhibits, with the understanding the objection will go to further exhibits similarly identified, to save a lot of interruption of the Court. The defendant objects to the exhibits 1 to 6, inclusive, which are now offered in evidence or offered for further identification, and to all similar documents and exhibits identified in the manner in which these exhibits have

(Testimony of Irene Vermillion.)

been identified, that for the purpose of this case they're incompetent, irrelevant and immaterial, a proper foundation has not been laid in this respect, that the exhibits do not appear to be in the handwriting of the defendant, nor to have thereon endorsed the signature of the defendant; that the state of the record is such that the responsibility of the defendant or the connection with these exhibits of the defendant has not been shown; that as to the defendant, in the present state of the record, all these exhibits are hearsay; that the evidence is insufficient to establish a conspiracy and to make these exhibits competent on the theory of an act of the co-conspirator.

Mr. Stocking: I would say I haven't offered them yet, but I will offer them so that his objection can go to [104] my offer.

The Court: Well, are you offering them now?

Mr. Stocking: I was going to have them identified first, and then offer them.

The Court: Let me hear this particular question. Wait until Mr. Emigh is finished.

Mr. Emigh: I just at the suggestion of counsel wish to add the further important point, that the exhibits leave the jury to surmise and speculation in respect to their competency and effect. The purpose of this, your Honor, is I would like this objection to similar exhibits under the same circumstances, and may renew it by simply making the same objection that has been made in respect to

(Testimony of Irene Vermillion.)

Exhibits 1 to 6, inclusive, and it will save a great deal of time of the Court if we can do that.

The Court: Well, counsel, if at each time you will make your objection, you will actually note it, and then say that you're referring to this objection, that will be satisfactory. I had assumed from what you said in the beginning that you would not make any objection to further exhibits, and that I was to understand that you were objecting, and I couldn't agree to that, because I'd never know.

Mr. Emigh: That's right.

The Court: These have not yet been offered. I know your view. Would you read the last question, please, or the only question, Mr. Taylor?

(Whereupon, the reporter read the last previous question.)

A. (Witness): Exhibit 1 are the checks from E. J. Gibson Company covering the original offering of the Lucky Friday Extension—

Mr. Emigh: Now, just a minute. As to what they cover, we will object to that, as the check is the best evidence.

The Court: Overruled.

Mr. Emigh: Exception.

The Court: Noted.

A. Exhibit 2 are the checks received from Edwin LaVigne and Company—

Mr. Emigh: Same objection.

A. —to the Lucky Friday Extension.

(Testimony of Irene Vermillion.)

Mr. Emigh: May my objection go to these six exhibits?

The Court: You may have that objection to these six, on the same ground.

Mr. Emigh: And exception.

A. (Witness): Exhibit number 3 is checks received from Pennaluna and Company to the Lucky Friday Extension for the original issue. Exhibit number 4, duplicate deposit [106] slips to the Idaho First National Bank for the credit of Lucky Friday Extension. Exhibit number 5 are the stubs of Lucky Friday Extension checks. Exhibit 6 are the Lucky Friday Extension checks which were written on the Lucky Friday account.

Q. (By Mr. Stocking): And exhibits number 1 to 3, those checks bear your endorsement, do they not? A. Yes.

Mr. Stocking: I'll offer exhibits 1, 2 and 3 in evidence.

Mr. Emigh: To which, may it please the Court, the objection which I made a few moments ago is now made to the offer of those exhibits, when I made the objection to 1 to 6 inclusive.

The Court: I will take under advisement the admissibility of these six exhibits, on the present state of the record. Ruling is reserved.

Q. And Exhibit 6 were checks which were prepared by you, as you testified, under the direction of Keane and Allen? A. Yes.

Q. And Exhibit 4 is the bank deposit slips,

(Testimony of Irene Vermillion.)

whereby the money was deposited in the bank, and the deposit slips were made under your direction or by you, is that correct?

A. Well, there's one that was made at the bank, but the rest I believe were all made by myself. [107]

Q. You kept those as an employee of the company, in the regular course of business for the Extension Company? A. Yes.

Q. And Exhibit 5 is the check stub book which was made by you, is that correct, prepared by you?

A. Yes.

Q. In your regular course of employment?

A. Yes.

Mr. Stocking: I will now offer exhibits 4, 5 and 6 in evidence.

Mr. Emigh: As to the exhibits 4, 5 and 6, the defendant objects on the grounds heretofore stated as to exhibits 1 to 6 inclusive and the exhibits 1, 2 and 3.

The Court: Ruling is reserved.

(Whereupon, bank statements of Extension Company were marked Plaintiff's Exhibit No. 7 for identification.)

Q. I hand you plaintiff's exhibit for identification number 7, and ask if you can identify that, please? A. Yes.

Q. And what is it?

A. These are the bank statements of the Lucky Friday Extension Mining Company.

(Testimony of Irene Vermillion.)

Q. And those came to you in the regular course of your employment by the Extension Company?

A. Yes.

Q. Did you check those checks in Exhibit 6 against the bank statement, Exhibit 7, every month?

A. Yes.

Mr. Stocking: I'll offer Exhibit 7 in evidence.

Mr. Emigh: To which we object on the grounds and for the reasons that the same has not been shown to have any connection with the defendant Allen in any respect, and Allen has not been shown to have any access to them or any connection therewith, and in addition to that, the objection made to Exhibits 1 to 6 will be added.

The Court: On the present state of the record ruling is reserved as to Exhibit 7.

Mr. Stocking: Mr. Clerk, I'd like to extract checks number 8 and 9 from exhibit 6, and have them marked, check number 8 marked Exhibit 6-a, and check number 9 marked Exhibit 6-b.

(Whereupon, check #8 Extension Company was marked Plaintiff's Exhibit No. 6-a for identification.)

(Whereupon, check #9 Extension Company was marked Plaintiff's Exhibit No. 6-b for identification.)

Q. Handing you exhibits marked 6-a and 6-b for identification, which are a part of Exhibit 6,

(Testimony of Irene Vermillion.)

I will ask you if you can identify those checks as to when they were issued by you? [109]

A. These checks weren't issued by me.

Q. They bear your signature, do they not?

A. Yes.

Q. And when did you put your signature on these checks? A. Mr. Allen came into the—

Mr. Emigh: Just a minute; objected to as not responsive to the question.

Q. When?

A. August; sometime in August, probably the 7th or 8th.

Q. Of what year? A. 1945.

Q. And what was the condition of those checks after you had placed your signature on them? Had you filled in the remainder of the check?

A. No.

Q. So that you signed them in blank?

A. Yes.

Q. And at whose request did you do that?

A. Mr. Allen.

Q. That's the defendant James Allen?

A. Yes.

Q. And where did this take place?

A. In Mr. Keane's office; that is, he asked me to give him two checks.

Q. Mr. Allen asked you? [110] A. Yes.

Q. And asked you to sign them in blank?

A. Yes.

Mr. Stocking: Now, I'll ask that the third page of Exhibit 5 be marked Exhibit 5-a.

(Testimony of Irene Vermillion.)

(Whereupon, a page of Exhibit 5 was marked Plaintiff's Exhibit 5-a for identification.)

Q. Referring now to the third page of Exhibit 5, which has been marked Exhibit 5-a for identification, what notation did you make on the check stub with respect to these checks which you have identified as Exhibits 6-a and 6-b?

Mr. Emigh: Objected to, as the exhibit is the best evidence.

The Court: Overruled.

A. "To J.A.A." on stub number 8, and "To J.A.A." on stub number 9, in pencil.

Mr. Emigh: Exception.

Mr. Stocking: These particular exhibits are part of the exhibits which have been offered, but I'll re-offer Exhibits 6-a, 6-b, and 5-a.

Mr. Emigh: To which we object as incompetent, irrelevant and immaterial.

The Court: 6-a and 6-b are the checks?

Mr. Stocking: Yes.

Mr. Emigh: Incompetent, irrelevant and immaterial, [111] and a proper foundation has not been laid.

The Court: The Court will take under advisement and reserve ruling as to the admission of Exhibit 5-a for identification. Exhibits 6-a and 6-b, being the checks which were from Exhibit 6 for identification—

Mr. Stocking: Yes.

The Court: —are offered, are admitted.

(Testimony of Irene Vermillion.)

(Whereupon, Plaintiff's Exhibits No. 6-a and 6-b for identification were admitted in evidence.)

Mr. Emigh: I wanted to add that they are not shown to be in the same condition that they were at the time that she last saw them.

The Court: I recognize that.

Mr. Emigh: The proper foundation has not been laid. Exception.

Q. (By Mr. Stocking): All right; now, where did you make delivery of these checks signed in blank, Exhibits 6-a and 6-b?

A. In the Callahan Consolidated office.

Q. And to whom did you deliver them there?

A. To Mr. Allen.

Q. And who else did you see in the Callahan Consolidated office at that time?

A. Mrs. French.

Q. That's Beatrice McLean French?

A. Yes. [112]

Q. And what is her capacity in the Callahan office?

A. Secretary to the Callahan Consolidated.

Q. Whereabouts did you see her—

The Court: Secretary of what?

A. Callahan Consolidated Mines.

Q. Where is that office located in relation to Mr. Keane's office? A. Oh, it's down the hall.

Q. In the same building, the Gyde-Taylor Building in Wallace? A. Yes.

(Testimony of Irene Vermillion.)

Q. And where was Mr. Allen standing when you delivered the checks?

A. He was standing by Mrs. French, and when I came in the door he walked over and met me, and I handed him the checks.

Q. And he had previously requested that you—

Mr. Emigh: Just a minute; leading and suggestive.

Q. Yes, I'll strike that. And this had followed his previous request to you?

Mr. Emigh: Same objection; objected to as leading and suggestive, not supported by the evidence.

The Court: Well, on the ground it's not supported by the evidence I'll overrule the objection.

Mr. Emigh: Exception.

The Court: It's repetitious. [113]

Q. (By Mr. Stocking): I'll ask you this—

The Court: If the objection is made on that ground I'll sustain it.

Mr. Etter: Object to it as repetitious.

The Court: All right; sustain the objection.

Q. The request for the checks had been made where?

Mr. Etter: That's repetition too.

The Court: Overruled.

Mr. Etter: Exception.

A. In Mr. Keane's office.

Q. And how soon thereafter was delivery made in the Callahan Consolidated office?

A. Oh, probably five minutes, as soon as I could

(Testimony of Irene Vermillion.)

get the check book out and sign my name and bring it in.

Q. And did Mr. Allen make any other statement to you at that time with regard to his purpose in taking these checks?

Mr. Etter: Leading and suggestive likewise; object to it on that ground.

The Court: Overruled. Say, counsel, there is the general rule, which is very wise, that the counsel who is examining or cross-examining a witness, or expects to, is the one who should make objections. If I have to consider objections by two or three counsel with respect to the same witness I will have much difficulty, so if Mr. Emigh is going to cross-examine the witness, I suggest that he [114] make the objections.

Mr. Emigh: I'll make that objection, your Honor.

The Court: All right; to a degree I acquiesce in the original objection by Mr. Etter, and there isn't anything in my present suggestion other than the desire to avoid confusion. All right; you make the objection that Mr. Etter voiced?

Mr. Emigh: I do. I make the objection stated by counsel.

The Court: Let me hear it, Mr. Taylor.

(Whereupon, the reporter read the objection stated by Mr. Etter, as follows: "Leading and suggestive likewise; object to it on that ground.")

(Testimony of Irene Vermillion.)

The Court: No, I mean Mr. Etter's objection.

The Reporter: That's the objection I read, your Honor.

The Court: I don't know what it means, so Mr. Emigh may make the objection.

Mr. Emigh: I think that's the way the record stands, your Honor.

Mr. Stocking: I'll reframe the question so he can make his objection.

Q. Did he ever have any other conversation with you about these checks, about his purpose in taking these checks?

Mr. Emigh: Objected to as leading and suggestive, [115] the nature of the conversation.

The Court: Overruled.

A. Mr. Allen asked me for the checks, and I asked him what I should put on the stub, and he told me he would give me the information later.

Q. Did he give you this information later?

A. No.

Q. And when was the next time you saw these checks?

A. When they cleared the bank and I received the bank statement.

Q. Were these checks prepared on your typewriter, Mrs. Vermillion? A. No.

Q. Are you familiar with the check protector which appears on these checks?

A. I am familiar with one which seems to be a—

(Testimony of Irene Vermillion.)

Mr. Emigh: Just a moment; are you qualifying her as an expert on handwriting or typewriting?

Q. I haven't qualified her as that. I asked if she was familiar with the check protector stamp which appears on these checks. A. Yes.

Q. And do you know what stamp that is, or where that stamp is located?

Mr. Emigh: Just a minute. Before this witness answers [116] this question, we would ask, for the protection of the defendant, to cross-examine her as to her knowledge of stamps.

The Court: All right, you may.

#### Voir Dire Examination

By Mr. Emigh:

Q. Mrs. Vermillion, what kind of a check protector was this stamp put on with, what make?

A. I don't know.

Q. You don't know? A. No.

Q. Do you know how many of that kind of check protector are in Wallace, Idaho? A. No.

Q. Do you know where that was put on this check? A. No.

Q. You can't state from observing that, then, what check protector was used in putting that stamp on there? Answer yes or no. A. No.

Mr. Emigh: That's all. We'll object to the question on the ground that the witness doesn't appear qualified to testify as to the fact sought to be elicited.

(Testimony of Irene Vermillion.)

Mr. Stocking: I'll refer these checks to the jury, if the Court please.

The Court: Let me hear the last question. [117]

(Whereupon, the reporter read the last previous question propounded by Mr. Stocking.)

The Court: No, I mean the question put by Mr. Stocking.

The Reporter: That is the question put by Mr. Stocking.

The Court: Well, that's a double question, and is confusing to me. I'll sustain the objection.

Mr. Stocking: I'll have other questions. Check number 8, the Lucky Friday Extension Company check, Wallace, Idaho, August 7, 1945, is "Pay to the order of Delaware Mines Corporation, \$10,000," and it's signed Lucky Friday Extension Mining Company, Irene Vermillion, and the check protector appears in the second line of the check, "The sum Ten Thousand Dollars 00 cents" drawn on the Idaho First National Bank of Wallace, Idaho, marked "For deposit only" on the back, and bears the bank stamp "Credited to the account of the within named payee" and so forth. Check number 9 is Lucky Friday Extension Mining Company check dated August 28, 1945, and it's drawn to the Montana Leasing Company, \$5,000. The check protector shows the sum of Five Thousand Dollars and no cents; it's also signed by Irene Vermillion, Lucky Friday Extension Mining Company, drawn on the

(Testimony of Irene Vermillion.)

same bank as check number 8, and bearing the same endorsement on the back, "For deposit only" and "to [118] the account of the within named payee."

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mrs. Vermilion, you are familiar with the checks that appear in the plaintiff's Exhibit 6, which has been offered in evidence here, and can you tell me whether or not there are other checks than check number 9 which were drawn to Montana Leasing Company which appear in this exhibit?

Mr. Emigh: I think the checks are the best evidence. We'll make that objection, and that the proper procedure is to single out those checks, and not make it by way of examination.

The Court: Overruled.

Mr. Emigh: Exception.

Q. Answer the question.

A. Yes, there are.

Q. And under whose direction were those checks drawn to Montana Leasing Company?

A. Mr. Keane and Mr. Allen.

Q. And were you familiar with the records of the Montana Leasing Company? A. Yes.

Q. Were they maintained in your office?

A. Yes.

(Whereupon, folder containing [119] bank statements and cancelled checks was marked Plaintiff's Exhibit No. 8 for identification, and

(Testimony of Irene Vermillion.)

bank statements and cancelled checks of Montana Leasing Company and Lexington Silver Lead Co. for various months were marked Plaintiff's Exhibits No. 8-a to 8-o inclusive.)

(Whereupon, bank deposit slips of Montana Leasing Company and Lexington Silver Lead Co. were marked Plaintiff's Exhibit No. 9 for identification.)

Q. Mrs. Vermillion, I'll hand you exhibits marked for identification 8-a to 8-o inclusive, and ask you if you can identify those? Can you identify those? A. I'll take a look at them. Yes.

Q. And what are they, please?

A. These are the checks and the bank statements of the Montana Leasing Company and the Lexington Silver Lead Mines.

The Court: Checks and bank statements of the Montana Leasing Company?

A. And Lexington Silver Lead Mines.

Q. And what was Lexington Silver Lead Mines with relation to the Montana Leasing Company?

A. It was the same place; they had just changed the name and re-incorporated it.

Q. Was this carried in the same bank account?

A. Yes. [120]

Q. And where have those exhibits been; in whose custody have those exhibits been?

A. When do you mean?

Q. Since they—or did they come into your custody in your employment? A. Yes.

(Testimony of Irene Vermillion.)

Q. And did you retain them in your custody?

A. Yes.

Q. And you obtained the bank statements every month? A. Yes.

Q. And under whose direction were you acting in maintaining these records of the Montana Leasing Company and Lexington Silver Lead Mines?

A. Mr. Keane and Mr. Allen.

Mr. Stocking: I'll offer exhibits 8-a to 8-o in evidence.

Mr. Emigh: To which the defendant objects as being incompetent, irrelevant and immaterial, the proper foundation has not been laid, as not tending to prove or disprove any issue in this case, as not being established as constituting any part of any alleged conspiracy, as to being an intermingling of a great many exhibits which do not pertain to the question here.

The Court: Ruling reserved.

Mr. Emigh: Exception. [121]

Q. (By Mr. Stocking): I now hand you Plaintiff's exhibit 9 for identification, and ask you if you can identify that exhibit?

A. These are the duplicate deposit slips made to the Montana Leasing and Lexington Silver Mines.

Q. And who made these, who prepared these slips? A. I prepared most of them.

Q. Were these part of the records that were in your custody, of the Montana Leasing Company?

A. Yes.

(Testimony of Irene Vermillion.)

Q. Does it appear that you prepared most of these deposit slips from the date June 4, 1945, on? Will you examine those, please, in exhibit 9?

A. Yes.

Q. And at whose direction did you prepare those deposit slips; I'm referring now to the ones from June 4, 1945, on, which appear in Exhibit 9?

A. Mr. Keane and Mr. Allen.

Q. And did you ordinarily make the deposits in the bank for this company? A. Yes.

Mr. Stocking: I'll offer in evidence, if the Court please, Exhibit number 9, that portion of Exhibit number 9 from June 4, 1945, on. The first deposit slip goes back to 1943, and it's not pertinent to our case. [122]

Mr. Emigh: May I take a look at this Exhibit 8?

Mr. Stocking: Those run from June, 1945, on.

Mr. Emigh: To which, may it please the Court, the defendant objects on the grounds that the proper foundation has not been laid, the exhibit is incompetent, irrelevant and immaterial, no evidence sufficient to connect the defendant Allen with the transactions therein contained or to establish that he was bound thereby having been made, that the same is as to Allen hearsay, and only tends in the form it is in to confound and confuse the jury.

The Court: It's about time for the jury's morning recess. The jury may now have a recess which I think will be about ten minutes. The jury may retire.

(Testimony of Irene Vermillion.)

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: The wisdom of the court's having taken under advisement the offer of Exhibit number 9 for identification now appears, because from subsequent examination it seems that the stubs therein from 1943 until June 4, 1945, have no connection with the case. I suspect, without knowing, that probably the same situation is true as to Exhibits 8-a to 8-o inclusive.

Mr. Stocking: No, your Honor, they run from June, [123] 1945, through August, 1946, which was the period under which we allege the money was being diverted from the Extension and Pilot to Montana Leasing.

The Court: Well, I'm not at all convinced that these subsequent checks are material. If the monies belonged to the Extension or the Pilot companies, and if this witness at the direction of Mr. Allen made checks to the Leasing Company or to its successor, the Lexington Company, or if this witness at Mr. Allen's request gave him blank checks, it seems to me that probably that's all the government has to show. It becomes then the burden of someone else to justify those checks. Under the opening statement the Leasing Company and its successor, the Lexington Company, were not companies of the stockholders of the Extension or of the Pilot.

(Testimony of Irene Vermillion.)

Mr. Stocking: Our position is this, if your Honor please; that is probably true, but none of the checks from the Pilot or Extension bear Allen's signature. His name appears no-place on those checks. Our only evidence is to show that he caused the diversion of this money. Now, we believe this, that if we can show through these checks that the money in the Montana Leasing Company was being spent by Keane and Allen, substantial quantities of money, that these checks were diverted from Pilot and Extension at a time to meet debit overdrafts in Montana Leasing [124] Company, that there's a direct relationship to show that Allen knew or should have known where all of this hundred thousands of dollars were coming from, going into his company, and in which he was participating in the spending.

The Court: Well, this witness has now testified that she gave two blank checks to Mr. Allen—

Mr. Stocking: Which testimony of course will be denied.

The Court: —she gave it to him, and those checks under the testimony at least ultimately showed up filled in to the Leasing Company.

Mr. Stocking: One to the Delaware and one to the Leasing Company.

The Court: One to the Delaware and one to the Leasing Company. Now, at the present time, if undenied, that evidence constitutes at least a strong suggestion of wrongful action. If anybody takes

(Testimony of Irene Vermillion.)

the stand and denies it, maybe these other checks then become extremely proper on cross-examination.

Mr. Stocking: Well, it won't be so much denying that the money went to Montana Leasing, because the defendant Allen will recognize that there are checks in there which were made payable to Montana Leasing, but he can take a position that he didn't know where that money was coming from. Our position is this, that we can show [125] that they were spending such large amounts of money in the Montana Leasing, and he was participating in the writing of checks in the Montana Leasing, numerous times the checks came over from Pilot or Extension to meet overdrafts in the Montana Leasing, which would indicate that that was the source of their funds; it was known to both Keane and Allen, and I think it's a circumstance which would add to the government's case.

The Court: Counsel, it is always desirable that a jury not be submerged by a mass of exhibits. At this stage of the proceedings I am very doubtful of the wisdom of admitting the exhibits offered. I do not know whether Mr. Keane is going to be a witness. If he is, after he is, it may become clearer that I should admit them, or it may become less clear that I should admit them, but I'm very doubtful of the wisdom of admitting a great mass of exhibits. Ordinarily I like to know what the exhibits are that I admit, and certainly you gentlemen are going to agree that it would take me quite

(Testimony of Irene Vermillion.)

a while to understand all the exhibits that I have introduced if I would admit 8-a to 8-o inclusive, and 9 following June 4, 1945.

Mr. Stocking: It is our position that the schedules which will be prepared by Mr. Denney, the accountant, would interpret the exhibits.

The Court: Well, maybe after they're in I may be [126] willing to admit them. I may be willing to admit them before. I'm going to reserve ruling now. The ruling being reserved means that each side is put on notice, the government is put on notice that it may have some difficulty getting the exhibits in, the defendant is put on notice that he shouldn't be too complacent about the exhibits being ultimately rejected. Ruling reserved. We will be at recess for ten minutes.

(Short recess.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mrs. Vermillion, are you familiar with the Pilot Silver Lead Mines, Inc., that company?

A. Yes.

Q. Were you one of the officers of that company?

A. Yes.

Q. Of what office?

A. Vice president.

(Testimony of Irene Vermillion.)

Q. And were you one of the incorporators also?

A. Yes.

Q. What month was that company formed, what month of the year, do you recall?

A. I think May, 1946. [127]

Q. You're not sure of that date? It may have been formed several months prior to that?

A. Yes, that's right.

Q. But it was organized by May, 1946, you're sure of that? A. Yes.

Mr. Emigh: We'll object as leading and suggestive.

The Court: Yes, I'll sustain the objection.

Q. Who were the organizers of that company, Mrs. Vermillion?

A. You mean organizers, or incorporators?

Q. The organizers.

Mr. Emigh: It will be objected to as calling for a conclusion of the witness. The incorporators are the legal organizers of the company, and further statement as to organization calls for a conclusion of the witness, invades the province of the jury and the court. If they have evidence as to organization which involves some person not an incorporator, there's a proper method of showing it, otherwise the incorporators are the organizers.

Mr. Stocking: I'll reframe that; I'll withdraw the question.

The Court: All right.

(Testimony of Irene Vermillion.)

Q. Were you present when the Articles of Incorporation were prepared for this company?

A. Yes.

Q. Where were they prepared? [128]

A. In Mr. Keane's office.

Q. And who prepared them?

A. I typed them; is that what you mean?

Q. Yes; and at whose direction did you do the typing? A. Mr. Keane and Mr. Allen.

Q. Was Mr. Allen present at any time when you heard discussions of this organization being created?

A. I don't recall any specific time.

Q. Do you recall whether he was there at the time the Articles of Incorporation were prepared?

A. I really—I don't recall that he was there at that time, that they were prepared.

Q. Did you submit the Articles of Incorporation to him? A. I sent him copies, yes.

Q. Now, what were your duties in connection with this Pilot Silver Lead Mines, Inc., as an officer?

A. Just to prepare the—take care of the original stock issue and the stock transfers, deposit the checks, and pick up the bank statements.

Q. And when you're speaking of the stock transfers, just what does that include?

A. Well, after the stock has been sold, then it's bought and sold, and the making up the new certificates and cancelling the old certificates.

Q. What did your duties include in connection with the [129] original issuance of the stock?

(Testimony of Irene Vermillion.)

A. Receiving the checks from the brokers, and issuing the stock to the names which were on their letters, their order letters, and mailing them back to the brokers, or delivering them.

Q. And in connection with the mailing of the certificates back to the brokers, were letters of transmittal prepared? A. Yes.

Q. And who prepared those letters?

A. Mrs. French and myself.

Q. And Mrs. French is the Mrs. Beatrice French referred to previously, in Mr. Callahan's office?

A. Yes.

Q. Was there any arrangement made with you for any additional compensation for this work for Pilot? A. Yes.

Q. And who made that arrangement?

A. Mr. Keane and Mr. Allen.

Q. And what were those arrangements?

A. Mr. Keane and Mr. Allen—I don't recall which one said it—

Q. Was it said in the presence of—were both of them present?

A. Both of them were present, and we were in Mr. Keane's private office, and they said that the secretary's salary of \$150.00 would be divided between Mrs. French and myself. [130]

Q. Who was the secretary of the company?

A. I think Mr. Evans was, but he was ill and couldn't act.

Q. Is that the reason that arrangement was

(Testimony of Irene Vermillion.)

made for you to do the issuing of the certificates?

A. Yes.

(Whereupon, Pennaluna checks to Pilot were marked Plaintiff's Exhibit No. 10 for identification.)

(Whereupon Redfield checks to Pilot were marked Plaintiff's Exhibit No. 11 for identification.)

(Whereupon LaVigne checks to Pilot were marked Plaintiff's Exhibit No. 12 for identification.)

Q. Handing you Plaintiff's exhibits for identification 10, 11 and 12, I'll ask you to examine those and state whether or not you can identify them?

A. Yes.

Q. Whose endorsement appears on those exhibits?

A. Mine, or F. C. Keane's signature written by me.

The Court: Your endorsement or whose?

A. F. C. Keane.

Q. You say written by you? A. Yes.

Q. What is Exhibit 10?

A. These are checks from Pennaluna and Company to cover original issue stock in Pilot Silver.

Q. And what is Exhibit 11? [131]

A. Exhibit 11 are checks from Ben Redfield and Company covering original issue of Pilot Silver Lead stock.

(Testimony of Irene Vermillion.)

Q. And what is the exhibit marked for identification number 12?

A. These are checks from Edwin LaVigne and Company covering original issue of Pilot Silver Lead stock.

Q. And what was done by you with those checks after you endorsed them?

A. They were deposited in the Idaho First National Bank to the credit of Pilot Silver.

Q. To the Pilot Company? A. Yes.

(Whereupon, check from Gibson to Pilot, 5/20/46, was marked Plaintiff's Exhibit No. 13 for identification.)

Q. I'll hand you Plaintiff's exhibit number 13, and ask you if you ever received that exhibit in the course of your employ as an employee of the Pilot Company? A. No.

Q. When did you first see this Exhibit 13?

Mr. Emigh: Objected to as immaterial, if she didn't receive it.

The Court: Overruled; you may answer.

Mr. Emigh: Exception.

A. Last May, in Mr. Erickson's office. [132]

The Court: Where?

A. Mr. Erickson's office.

(Whereupon, bank deposit slips, Pilot, were marked Plaintiff's Exhibit No. 14 for identification.)

Q. I hand you plaintiff's 14 for identification, and ask you if you can identify that exhibit?

(Testimony of Irene Vermillion.)

A. These are duplicate deposit slips of the Pilot Silver which were deposited in the Idaho First National Bank at Wallace.

Q. And who prepared these deposit slips?

A. I prepared most of them.

Q. With reference to the deposit slip on the top of the exhibit, had you prepared that deposit slip?

A. No.

Q. When did that deposit slip first come to your attention?

A. Oh, I really don't know; I think Mr. Keane just brought it in and gave it to me.

Q. That was at the time that you were setting up these records of the company? A. Yes.

(Whereupon, checks of Pilot Co. were marked Plaintiff's Exhibit No. 15 for identification.)

Q. I'll hand you Exhibit 15 for identification, and ask you if you can identify that exhibit?

A. These are checks drawn on Pilot Silver Lead Mines Company. [133]

Q. And who drew those checks?

A. Mostly by myself.

Q. And whose signature did you place on the checks?

A. They're endorsed by Mr. Keane or by Mr. Keanie's name written by me.

Q. That is, not endorsed, but signed?

A. I mean signed, yes, excuse me.

(Testimony of Irene Vermillion.)

(Whereupon, checks stubs, Pilot Co., were marked Plaintiff's Exhibit No. 16 for identification.)

Q. Plaintiff's exhibit 16 for identification, can you identify that, please? A. Yes.

Q. What is that exhibit?

A. These are the stubs of Pilot Silver Lead Mines.

Q. And who prepared that exhibit?

A. I did.

Mr. Stocking: I'll offer in evidence Plaintiff's Exhibits 10, 11, 12, 14, 15 and 16.

The Court: You're not offering 13 at this time?

Mr. Stocking: No; that was the one she didn't—

Mr. Emigh: As to Plaintiff's exhibit number 10 for identification, the defendant objects on the grounds and for the reason that the same is incompetent, irrelevant and immaterial to the issues in this case; a proper foundation has not been laid; no evidence tends to establish the [134] connection of the defendant with the matters to which the exhibit relates; that there is no evidence that the defendant was privy to any of the transactions to which the exhibit relates, and the exhibits affirmatively show on their face that he did not participate in the receipt or deposit of the same.

Mr. Stocking: May I have permission to ask one more question with respect to these exhibits?

The Court: You may.

(Testimony of Irene Vermillion.)

Q. With respect to Exhibit 15, which you have identified as the Pilot checks, at whose direction were those checks drawn by you?

A. Mr. Keane and Mr. Allen.

Mr. Stocking: That's all.

Mr. Emigh: Are you through? The specific objection was made to Exhibit 10, your Honor, to which the other examination did not relate.

The Court: Well, I'm inclined to think that as to Exhibit 15 the ruling should be reserved until there's more evidence, and therefore as to Exhibit 15 for identification the ruling is reserved. As to the other exhibits, 10, 11 and 12, 14 and 16, I don't recollect any mention of Mr. Allen's name as to any of them. It would seem to me that upon the present state of the record that I should sustain the objection, without any prejudice to plaintiff's later attempting to have them admitted.

Mr. Stocking: I was going to call the Court's attention to the witness's testimony that she acted under his direction as well as Keane's direction in connection with the organization of this company and in connection with the writing of the checks by which the money was disbursed.

The Court: I have not before me the question of whether the Articles of Incorporation should or should not be admitted. She did testify as to Mr. Allen to some extent in connection with the Articles, or the preparation. I recollect no testimony by her as to Mr. Allen—

(Testimony of Irene Vermillion.)

Mr. Stocking: She was hired by Mr. Allen.

The Court: —as to any of these other exhibits except exhibit 15 she said was drawn at the direction of Mr. Keane and Mr. Allen, and I'm reserving ruling as to that.

Mr. Stocking: I call the Court's attention to the fact she was hired by Mr. Allen, her salary was fixed by Mr. Allen and Mr. Keane jointly.

The Court: I recognize all that. The Court's ruling is that as to Exhibits 10, 11, 12, 14 and 16, that the defendant's objection is sustained on the present state of the record.

(Whereupon, Pilot bank statements were marked Plaintiff's Exhibit No. 17 for identification.) [136]

Q. I hand you Plaintiff's exhibit 17 for identification, and ask you if you can identify that, please? A. Yes.

Q. What is it?

A. It is the bank statement of the Pilot Silver Lead.

Q. And this came to you in the regular course of business of that company? A. Yes.

Q. And these bank statements were checked by you with the company's checks contained in Exhibit 15 for identification? A. Yes.

Mr. Stocking: I'll offer that under the same situation, if the Court please.

Mr. Emigh: To which the objection is made it's

(Testimony of Irene Vermillion.)

incompetent, irrelevant and immaterial at this point in the case, the proper foundation has not been laid, there is no testimony connecting Mr. Allen with those accounts, that those accounts or the bank statement relates to a great amount of matter not material to the case, that as to a conspiracy under which those would be admissible, no facts have yet been established which would prove such a conspiracy, and that they are in the nature of hearsay as to the defendant Allen.

The Court: As to Exhibit 17, there is some relationship testified by the witness between that exhibit [137] and Exhibit 15, concerning which I have reserved ruling, and ruling will be reserved as to Exhibit 17 for identification. You may proceed.

(Whereupon, check Allen to Pilot was marked Plaintiff's Exhibit No. 18 for identification.)

(Whereupon, letters to Gibson were marked Plaintiff's Exhibit No. 19 for identification.)

(Whereupon, letter to Redfield was marked Plaintiff's Exhibit No. 20 for identification.)

(Whereupon, letters to LaVigne were marked Plaintiff's Exhibit No. 21 for identification.)

Q. (By Mr. Stocking): Mrs. Vermillion, I'll hand you what has been marked for identification Plaintiff's exhibit 19, and ask you if you can identify that exhibit? A. Yes.

(Testimony of Irene Vermillion.)

Q. What is it?

Mr. Emigh: Just a minute. I think the defendant will object to that question, as the improper way to identify the exhibit. The statement by the witness of the exhibit is secondary evidence as to what the exhibit is, and we submit the proper way to identify it is to limit that examination as to where and when it was prepared and what it purports to show.

The Court: Well, I think there's nothing mistaken as to the question. I have to know what it is, to a degree, [138] before I know whether I can admit it or not. Objection overruled.

Mr. Emigh: Exception.

A. These are the original letters transmitting the original issue of Pilot Silver stock to the various brokers. This one happens to be all to E. J. Gibson Company.

Q. And where is the E. J. Gibson Company firm located? A. Spokane.

Q. And who prepared these letters?

A. Mrs. French and myself.

Q. And whose signature appears on these letters? A. Mine.

Q. Under whose direction did you prepare these letters? A. Mr. Keane and Mr. Allen.

Q. And after these letters were prepared transmitting the certificates, who prepared the stock certificates that accompanied these letters?

A. Mrs. French and myself.

Q. At whose direction were they prepared?

(Testimony of Irene Vermillion.)

A. Mr. Keane and Mr. Allen.

Q. After the letters were prepared and the stock certificates prepared, what was then done with these letters?

A. They were attached to the certificates and mailed out to the brokers.

Q. And who mailed those letters? [139]

Mr. Emigh: Just a minute. We object. There is no evidence the letters were mailed, and presupposes a fact that does not exist.

Mr. Stocking: She said they were mailed.

The Court: Overruled.

Mr. Emigh: Exception.

Q. Who mailed the letters?

A. I believe I mailed most of them.

Q. And Mrs. French was assisting, was she not?

Mr. Emigh: May I interpose a motion to strike, her evidence not being direct evidence of a statement of fact, but of a belief.

The Court: Overruled.

Q. Mrs. French was assisting you in this work?

A. We worked together.

Q. Was she acting under your direction in the preparation of these certificates and letters?

A. That's a hard question to answer.

Q. Was she an officer of the company?

A. I think she was assistant secretary. She signed stock certificates, I know, for a while.

Q. As assistant secretary?

A. As assistant secretary.

(Testimony of Irene Vermillion.)

Q. And where were these letters mailed?

A. At Wallace, or from Wallace. [140]

Q. From Wallace, Idaho? A. Yes.

Q. I hand you what has been marked for identification Plaintiff's Exhibit number 20, and ask if you can identify that? A. Yes.

Q. What is that?

A. It's a letter of transmittal to Ben Redfield Company of Spokane of stock the original issue of Pilot Silver.

Q. And who prepared that letter?

A. I did.

Q. And whose signature appears thereon?

A. Mine.

Q. What was done with that letter after it was prepared?

A. It, together with the certificates, were mailed to Mr. Redfield at Spokane.

Q. And were they mailed in an envelope addressed with the same address as the letter?

A. Yes.

Q. Does that apply also to the letters which are a part of Plaintiff's proposed exhibit 19?

A. Yes.

Q. At whose direction was that letter prepared and mailed?

A. Mr. Keane and Mr. Allen.

Q. I'll show you what has been marked for identification as [141] Plaintiff's exhibit number 21, and ask if you can identify that exhibit? A. Yes.

(Testimony of Irene Vermillion.)

Q. And what is it?

A. These are original letters of transmittal covering original issue certificates of the Pilot which were mailed to Edwin LaVigne and Company in Spokane.

Q. And who prepared those letters?

A. Mrs. French and myself.

Q. Who signed the letters? A. I did.

Q. And what was done with those letters after they were prepared and signed?

A. They were mailed to Spokane to Edwin LaVigne and Company.

Q. With the stock certificates? A. Yes.

Q. And were they mailed in an envelope addressed the same as it appears on the letters?

A. Yes.

Q. These exhibits will be further identified later. I hand you what has been marked for identification Plaintiff's exhibit 18, and ask if you can identify that exhibit? A. Yes.

Q. Referring to Plaintiff's proposed exhibit 14, can you state whether or not that exhibit 18 was deposited in the Pilot [142] account?

A. Yes.

Q. And who made that deposit?

A. I did.

Q. What was the date that that exhibit was deposited? A. November 20, 1946.

Q. And can you identify the signature on exhibit 18? A. Yes.

(Testimony of Irene Vermillion.)

Q. Whose signature is it? Mr. Allen's.

Mr. Stocking: I'll offer in evidence Plaintiff's exhibit 18.

Mr. Emigh: May I have a moment?

The Court: Surely.

Mr. Emigh: This is rather confusing as to some matters in this case, and I'd like to consult with my client a moment.

#### Voir Dire Examination

By Mr. Emigh:

Q. Have you any knowledge of what that check was paid for? A. No.

Q. None at all? A. No recollection.

Q. Huh? A. No recollection.

Q. No recollection; did you have knowledge at the time? [143]

A. I don't remember particularly about that check.

Q. You don't remember. You were an officer of the corporation? A. Yes.

Q. At that time? A. Yes.

Q. Isn't it a fact that that check was paid for machinery purchased by the Pilot, not paid for, for which Mr. Allen advanced the money, machinery which Mr. Sekulic was to receive the money for?

A. I don't recall specifically about that.

Q. You do not? A. No.

Mr. Emigh: At this time, may it please the Court, we'll object that there's no competency or relevancy shown as to this exhibit, it's incompetent.

(Testimony of Irene Vermillion.)

irrelevant and immaterial, does not prove or tend to prove any of the issues of this case.

The Court: It's not been offered yet, has it?

Mr. Stocking: I thought I offered it.

The Court: Was it offered in evidence, Mr. Taylor?

The Reporter: Yes, your Honor.

The Court: Well, let me see it.

Mr. Emigh: It doesn't show any proof in connection with the defendant in this case. [144]

The Court: I'd like to see it.

Mr. Emigh: The exhibit, the record may add, is as consistent with a legitimate transaction as any other.

The Court: Well, of course, after all the evidence is in the jury may be convinced that every action of Mr. Allen was consistent with propriety, in which event they should acquit him. This exhibit is one evidence that there was some connection between Mr. Allen and the Pilot Company. The objection is overruled.

Mr. Emigh: Exception.

The Court: It will be admitted for what, if any, help the jury thinks it is in arriving at the truth after it has all the evidence. Exhibit 18 admitted; objection overruled.

(Whereupon, Plaintiff's Exhibit No. 18 for identification was admitted in evidence.)

(Whereupon, check #17 of Pilot was marked Plaintiff's Exhibit No. 15-a for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, check #31 of Pilot was marked Plaintiff's Exhibit No. 15-b for identification.)

Mr. Stocking: I've taken from plaintiff's exhibit 15 the Pilot check number 17, which is—

The Court: These are from exhibit 15?

Mr. Stocking: Yes. Check number 17, which has been marked for identification 15-a, and check number 31, [145] which has been marked for identification 15-b.

Q. I'll show you these checks, Mrs. Vermillion, and ask if you can identify those two checks?

A. Yes.

Q. Who prepared those?

A. I typed them.

Q. And whose signature appears on those two checks? A. F. C. Keane.

Q. Is that his signature, or a signature by you?

A. That's his signature.

Q. That's his signature? A. Yes.

Q. And are you familiar with the name of the payee of those two checks? A. Yes.

Q. Where did you get your information concerning the payee of those two checks?

A. That company is one which was incorporated in the office.

Q. And did you have any conversations with the defendant Allen with regard to that company?

A. Yes.

Q. About when did those conversations or that conversation take place, approximately?

(Testimony of Irene Vermillion.)

A. I believe in—let's see—it was in June and July.

Q. Of what year? [148] A. Of 1946.

Q. And what was the name of this company that you had this conversation with Mr. Allen about?

A. War Eagle Silver Lead Mines, Inc.

The Court: What was the name of it?

A. War Eagle Silver Lead Mines, Inc.

Q. And what was this conversation, the substance of this conversation with Mr. Allen?

\* \* \*

(Noon recess.)

June 7, 1949, 1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.) [147]

Mr. Stocking: I believe I had asked the question, and Mr. Emigh was just objecting to my question, and that was in relation to Plaintiff's Exhibits 15-a and 15-b, and I had asked you, Mrs. Vermillion, what was the substance of your conversation with Mr. Allen regarding War Eagle Silver Lead Mines, Inc., during the period which you've indicated.

Mr. Emigh: To which we object on the grounds and for the reason that the time, place and circumstances have not been so fixed to afford opportunity for impeachment.

The Court: You may specify as nearly as you can.

(Testimony of Irene Vermillion.)

Q. (By Mr. Stocking): When do you fix that, as nearly as you can, Mrs. Vermillion?

A. In regard to the first check, would you say?

Q. Yes, take the first check; that would be check number 17, Exhibit number 15-a.

A. June 28, 1946.

Q. It was on or about that date? A. Yes.

Q. And what was the substance of that conversation with Mr. Allen?

The Court: June, what date?

A. 28th, 1946.

The Court: All right.

A. The Idaho First National Bank called that there was an [148] overdraft on the War Eagle, and we called—

Mr. Emigh: Just a second; that's objected to as detailing hearsay.

The Court: Yes. She may say what the conversation between her and Mr. Allen was, not what otherwise may have happened, except as the conversation itself stated it, and the witness's answer is stricken as not responsive.

A. I talked to Mr. Allen on the phone regarding an overdraft that happened—

Mr. Emigh: Just a minute; we ask that it be confined to conversation.

Mr. Stocking: Well, she is talking about the conversation.

A. On the phone.

The Court: Just say what, as near as you can, in

(Testimony of Irene Vermillion.)

substance, you can't remember the exact words—

Q. Did you put in a call to Mr. Allen?

A. Yes.

Q. All right, go ahead.

A. I don't know how to state it any other way.  
You'll have to ask me some questions.

Q. Go ahead the way you were stating it.

A. I told him that we had had a call from the Idaho First National Bank about an overdraft on the War Eagle, and he said to cover it, that he had made arrangements with Mr. [149] Porter, who would cover all drafts on the War Eagle up to \$5,000.00.

Q. And as a result of that conversation was this exhibit 15-a written up by you? A. Yes.

Q. And was that exhibit 15-a then deposited to the War Eagle account? A. Yes.

Q. By you? A. Yes.

Q. Now, with respect to the second check, 15-b, what conversation—did you have any additional conversation with Mr. Allen with regard to that check?

A. I'd have to see the bank statement to see if this was past the \$5,000.00.

Q. Which bank statement?

A. Do you have a War Eagle bank statement?

Q. No. Those are the only two checks we have.

A. I believe Mr. Porter must have that. I don't think I can specify to that.

Mr. Emigh: Just a minute; I think that ques-

(Testimony of Irene Vermillion.)

tion calls for a yes or no answer, and we would ask before further conversation, time, place and circumstances be fixed.

The Court: Well, let's hear the question. [150]

Mr. Stocking: I believe I asked if she had any further recollection of any further conversation with Mr. Allen regarding the second check.

The Court: Well, she may say whether she had or not.

A. I can't be certain on that.

Q. But this second check, 15-b, was drawn up by you, and also was that deposited by you in the War Eagle account? A. Yes.

Q. And this action was taken as the result of Mr. Allen's directions to you for both checks?

A. Yes.

Mr. Stocking: We'll now offer 15-a and 15-b in evidence.

Mr. Emigh: May I see the exhibits? Objected to as incompetent, irrelevant and immaterial, that proper foundation has not been laid for the introduction of said exhibits at this time, that the same do not tend to prove or disprove any issue under the indictment in this case; that's all.

The Court: All right, let me see the two proffered exhibits. Objection is overruled, Exhibits 15-a and 15-b admitted.

Mr. Emigh: May we ask an exception.

(Whereupon, Plaintiff's Exhibits No. 15-a and 15-b for identification [151] were admitted in evidence.

(Testimony of Irene Vermillion.)

Q. (By Mr. Stocking): Referring back to exhibits 6-a and 6-b, which were the checks you stated you signed in blank and gave to Mr. Allen on August 7, 1945, have you refreshed your recollection as to whether or not Mr. Keane was in Wallace, in the office in Wallace, on that date?

A. He was out of town.

Q. Did you refresh your recollection on that point? A. Yes.

Q. And what did you refer to to refresh your recollection?

A. From my memo pad for that year; I keep them from year to year.

Q. And where did you determine that he was on that date?

Mr. Emigh: Just a moment; to which we object on the ground and for the reason that the witness has not fixed a definite date in her testimony, and we ask that the witness be confined to a definite date.

Mr. Stocking: This question is confined to a definite date, August 7, 1945.

Mr. Emigh: Now, to which we object as contrary to the testimony of this witness as to the dates of those checks. She would not fix a definite date, except the 7th or 8th, my recollection of the testimony is.

The Court: Let me see the checks. Well, one is August 28, and the other is August 7. Your question—[152]

(Testimony of Irene Vermillion.)

Mr. Stocking: Is as to August 7, yes.

The Court: All right, you may re-specify.

Mr. Stocking: Yes. Her testimony was that she gave those checks together at the same time, the same date, in blank, signed in blank.

The Court: Well, she stated that Mr. Keane was out of town that date—

Mr. Stocking: That's right.

The Court: —according to her memo pad.

Mr. Emigh: The point I was making, if my memory doesn't fail me, she says the 7th or 8th, the date these checks were given, before.

The Court: All right, you may ask her what date these checks in blank were given.

Q. (By Mr. Stocking): What is your recollection as to the date that these checks were delivered to Mr. Allen? A. August 7, 1945.

Q. And now I'll ask you, did you determine or did you refresh your recollection as to where Mr. Keane was on that date?

A. He was in Avery, Idaho, or outside of Avery, Idaho, up in the hills on a fishing trip.

Q. And was he also there on August 8?

A. August 7, 8, I think he came back on the 9th or 10th; the 9th or 10th he returned.

Q. Now, referring to one more question with regard to plaintiff's [153] proposed exhibits 19, 20 and 21, which were the Pilot letters transmitting certificates to the brokers, were those letters placed in the mail on or about the dates indicated on each letter?

(Testimony of Irene Vermillion.)

Mr. Emigh: Objected to as repetition.

The Court: Overruled.

Mr. Emigh: Exception.

A. On or about, yes.

Q. Yes; I didn't think I'd covered that. Mrs. Vermillion, do you have in mind approximately how much salary you realized from your work in connection with these two companies? What was your compensation, entire compensation, aside from your regular salary, approximately?

A. I can't multiply in my head; seven months at \$75.00 a month; is that good enough?

Q. Yes; and then did you receive any bonus, either in stock or cash?

A. I received a five thousand dollar—excuse me, five thousand shares of stock in the Extension, and five thousand shares of stock in the Pilot.

Q. Did you dispose of that stock?

A. Yes.

Q. At approximately what price, do you recall?

A. Three cents a share.

Q. So that that amounted to how much?

A. It was approximately \$315.00.

Q. And there was no other compensation paid to you in the form of stock or cash? A. No.

(Whereupon, stock certificate stubs No. 1 to 250 of Pilot were marked Plaintiff's Exhibit No. 22 for identification.)

(Whereupon, stock certificate stubs No. 251 to 500 of Pilot were marked Plaintiff's Exhibit No. 23 for identification.)

(Testimony of Irene Vermillion.)

(Whereupon, stock certificate stubs No. 501 to 750 of Pilot were marked Plaintiff's Exhibit No. 24 for identification.)

(Whereupon, stock certificate stubs No. 751 to 1000 of Pilot were marked Plaintiff's Exhibit No. 25 for identification.)

(Whereupon, stock certificate stubs No. 1001 to 1250 of Pilot were marked Plaintiff's Exhibit No. 26 for identification.)

(Whereupon, stock certificate stubs 1251 to 1500 of Pilot were marked Plaintiff's Exhibit No. 27 for identification.)

(Whereupon, stock certificate stubs No. 1501 to 1750 of Pilot were marked Plaintiff's Exhibit No. 28 for identification.)

(Whereupon, stock certificates of Pilot Company were marked Plaintiff's Exhibit No. 29 for identification.)

Q. Mrs. Vermillion, will you please examine what has been [155] marked Plaintiff's exhibits for identification number 22 to 28 inclusive, and state whether or not you can identify those?

A. I can identify part of them.

Q. And which exhibits can you identify?

A. 23, 24, 22, 26, 25, and the first part of exhibit 27.

Q. And what are they?

(Testimony of Irene Vermillion.)

A. These are the stubs of the stock certificates that were issued in Pilot Silver Lead Mines, Inc.

Q. Who prepared those exhibits which you have identified?

A. Some were prepared by myself, and some by Mrs. French.

Q. And that was at the time that these books and records were in your custody in Mr. Keane's office?

A. Yes.

Q. And when were these books and records taken out of your custody, that is, the exhibit 27, part of which only you [156] can identify, approximately?

A. Approximately the 3rd or 4th day of March, 1947.

Q. Now, these are the regular books and records of the corporation, and were kept, were they, in the usual course of business at the time you were employed by the company? A. Yes.

Mr. Stocking: We'll offer in evidence exhibits 22 to 27 up to—was this date the date?

A. Yes, this is the last entry.

Mr. Stocking: Up to the certificate number 1376, which is dated March 5, 1947.

Mr. Emigh: To which the defendant Allen objects on the ground and for the reason that these exhibits all are and each thereof is incompetent, irrelevant and immaterial to prove any issue in this case; further, that as to the defendant Allen the same are hearsay, there being no evidence that the

(Testimony of Irene Vermillion.)

same were kept under his direction or under his control or that he had any control or connection therewith; that there is no sufficient establishment that these relate to any agreement or scheme by which it is alleged in the indictment a fraud was committed by Allen.

The Court: Ruling reserved.

Q. (By Mr. Stocking): I'll hand you a bundle which has been marked for identification as Plaintiff's Exhibit number 29, [157] and ask if you can identify that exhibit or any part thereof?

A. Could you give me that number? I mean I don't want to make a mistake.

Q. Certificate 1376.

A. I can identify this much of them, down to a certificate marked 1379.

Q. Well, I see that there are some certificates out of numerical order, in the 1400s, which are above that certificate. Did you mean that you could identify certificates up to that number?

A. Yes.

Mr. Emigh: May I have that number, then?

A. 1379—1376 is the number; 1379.

Q. 1379 was the certificate you referred to in here? A. Yes.

Q. Now, does your signature appear on some of the certificates in this Exhibit number 29?

A. Yes.

Q. And at whose request were you acting when you signed these certificates, placed your signature on them?

(Testimony of Irene Vermillion.)

A. Mr. Keane and Mr. Mc—Mr. Allen.

Q. And where the signature "F. C. Keane" appears on these certificates, was that signature ever signed by you? A. No. [158]

Q. Mr. Keane always signed these stock certificates his own signature, is that correct?

A. Yes, that's correct.

Q. Mrs. Vermillion, in connection with the Extension and Pilot Companies, did you ever have any conversations with the defendant Allen with regard to the transferring of stock certificates?

A. Yes.

Q. And how many such conversations?

A. Oh, I couldn't say.

Q. Were they numerous? A. Yes.

Mr. Emigh: Just a minute; objected to as calling for a conclusion of the witness. That's a matter of comparison.

The Court: Well, I'll strike the answer, and you may ask how often they were.

Q. How often were these conversations?

A. I couldn't be definite about that.

Q. What was the substance of the conversations with regard to the—

Mr. Emigh: Just a minute; to which the defendant objects on the ground and for the reason that proper foundation is not laid.

The Court: Overruled. [159]

Mr. Emigh: Exception.

The Court: You may answer.

A. Would you read that?

(Testimony of Irene Vermillion.)

(Whereupon, the reporter read the last previous question.)

A. To issue certain shares of stock and transmit them to him or to where he directed me to send them.

The Court: Would you just read that answer, please?

(Whereupon, the reporter read the last previous answer.)

Q. And do you recall from what certificates these shares were to be taken from or issued from?

A. What company are we speaking of now?

Q. Well, we'll take the Extension Company.

A. There were some from Mr. Keane's certificate, and a great share from Mr. Grismer's certificate.

Q. Was there a large amount of stock outstanding in Mr. Grismer's certificate?

A. Yes. I can't be specific about the amount; I'd have to check the record.

Q. And what about the Pilot certificates?

A. The same thing applies to the Pilot, with the exception that Mr. Grismer didn't have as large a certificate in Pilot as he did in the Extension, and I'd have to look at the stock book to be more definite. [160]

Q. But did Mr. Allen give you some directions as to issuing stock out of Mr. Grismer's certificate?

A. Yes, he would often call and have me issue certificates either in my name or Mrs. French's

(Testimony of Irene Vermillion.)

name, it was McLean at that time, and would direct that I get her to verify my signature, and I verify hers, and we would mail them to him.

The Court: What was her name then?

A. McLean.

Q. Beatrice McLean French is her full name, is it not? A. Yes.

Q. At that time would he give you any directions as to consulting Mr. Grismer about these transactions? A. No.

Mr. Stocking: You may cross-examine.

Mr. Emigh: Do you propose to offer those exhibits? You've had her to testify to them.

Mr. Stocking: Which exhibits?

Mr. Emigh: I don't think those certificates were offered.

Mr. Stocking: These certificates I haven't offered, no.

#### Cross-Examination

By Mr. Emigh:

Q. The certificates you were just testifying to are the certificates in the exhibit which is on the clerk's desk, [161] is that correct?

A. I don't know just exactly what ones are in there.

Q. What certificates were you talking about?

A. That I sent to Mr. Allen?

Q. When you talked about these conversations.

A. I can't specify them by number or amount, unless I would see the book; I'm sorry.

(Testimony of Irene Vermillion.)

Q. When did these conversations occur?

A. From July, the end of July, 1945, until, oh, I think September or October in 1946.

Q. Now, when you were first on the stand, early on the stand, you testified that Mr. Allen gave you instructions as to issuance of "their stock" using the word "their." To whom did you refer?

A. What do you mean, "their stock?" I mean, I don't understand your question.

Mr. Emigh: Mr. Reporter, will you read the question?

(Whereupon, the reporter read the last previous question.)

A. Mr. Keane and Mr. Allen's stock.

Q. Mr. Keane and Mr. Allen's stock. Now, when were those directions issued to you?

A. From time to time, either in the office or by phone.

Q. Where and when?

A. I would have to check with the stock book to see the dates [162] of the certificate.

Q. What is that answer? I can't get it.

A. I would have to check with the stock book to see the dates of the certificates.

Q. Can't you give an approximate time?

A. Just general. There were a great many certificates issued and mailed to him in Spokane, or delivered to him personally.

Q. And was that during July, 1945?

(Testimony of Irene Vermillion.)

A. That's when the original issue was out. It was probably a little later than that.

Q. Well, we'll say August?

A. I would rather not be definite unless I could see the stock book.

Q. Huh?

A. I'd rather not be definite until I could see the stock book.

Q. And that related to what is known as the original issue, was it, the first issue?

A. No, not the original issue.

Q. When was the first issue made?

A. In the last part of July, 1945.

Q. Yes; and with relation to that time, what time were these instructions given to you that you're speaking of?

A. It would be in August of 1945. [163]

Q. That was in August. Was there a second issue of the Extension stock made?

A. Sometime in January, the first part of January, in 1946.

Q. 1946?

The Court: This is the Extension?

A. Yes.

Q. And these instructions were some time before that?

A. They were just from time to time during that period.

Q. Yes; well, were there any of them before the second issue? A. Yes.

(Testimony of Irene Vermillion.)

Q. There were; how many before the second issue?

A. I couldn't testify unless I saw the stock book.

Q. Now, you say that that was Allen and Keane's stock?

A. The stock, a good part of it, was in Mr. Grismer's name, but that's the only way I can identify it.

Q. By what?

A. It belonged to the three of them, was my understanding.

Q. You say it did. How do you know that? Was it on the books in their name?

A. It was on the books in Mr. Keane's name and Mr. Grismer's name, but my instructions were to give Mr. Allen whatever he wanted, when he called me and gave me instructions to give them to him.

Q. Now, those were Mr. Keane's instructions to you?

A. Mr. Allen was there at the time he made them.

Q. And what date was that that these instructions were given?

A. That was at the time when the stock was originally put on the market, and the original issue, and I believe the first certificates were the last of August or the first part of September, that were given to Mr. Allen.

Q. And where were those instructions given?

A. In Mr. Keane's office.

Q. On approximately what date?

(Testimony of Irene Vermillion.)

A. I'll have to make it general; between the middle of August and the first week in September, 1945.

Q. The stock had all been issued at that time, I mean the—— A. Original issue?

Q. —Keane's stock?

A. You mean original issue?

Q. Original issue. A. I believe so.

Q. You hadn't ever talked about, or they hadn't talked to you about the issuance of the stock before the original issue was consummated?

A. No.

Q. This was the first time you had any conversation about it?

A. You mean in regard to giving some to——

Q. With Allen or Keane?

A. How do you mean?

Q. In relation to the disposal of the stock? [165]

A. Yes.

Q. And you're quite sure now that Mr. Allen gave you instructions as to the disposition of that stock, that first issue, before the second issue?

A. Yes.

Q. Can you tell us, of the stock of Keane's, to whom you were directed by Allen to issue any certificates?

A. Yes. Miss McLean, at that time, now Mrs. French, and myself.

Q. To McLean and yourself?

A. And we endorsed them and had the signa-

(Testimony of Irene Vermillion.)

tures verified. We called it street stock; that might not be accurate, but that's what we called it. It was negotiable.

Q. "We called it street stock;" who is "we?"

A. Mrs. McLean and myself; we're not technical about it.

Q. You didn't think your services justified the issuance of that stock, is that what you mean?

A. No; we understood it wasn't ours.

Q. You understood it wasn't?

A. No, it wasn't our stock.

Q. Did you sell it? A. No.

Q. Later?

A. Now, you're referring to this stock that was issued in large amounts, is that what you're referring to? [166]

Q. What's that?

A. You're referring to this stock that was issued in large amounts, is that what you're referring to? I'm not talking about the 3,000 shares given to me personally; that isn't what you're asking about, is it?

Q. Was this other stock issued to you and Mrs. McLean?

A. Yes, there was stock issued to us.

Q. And how much of that was there?

A. I don't know the amount. I'd have to refer to the—

Q. And when was that issued?

A. It was issued between, oh, somewhere in the

(Testimony of Irene Vermillion.)

middle of August, 1945, up through August, September, in 1946.

Q. And that is the stock you call Allen and Keane's stock? A. Yes.

Q. And that was in record in your name and Miss McLean's? A. Yes.

Q. And so issued? A. Yes.

Q. And when was Mr. Allen first, to your knowledge, a stockholder of record in that corporation?

A. I don't remember that I ever saw his name on the books.

Q. Was that Grismer stock free stock?

A. I don't understand what you mean by free.

Q. Or street stock?

A. I guess I'll have to qualify that. It was a very large [167] certificate, and we issued the street stock against it, but it wasn't cancelled out.

Q. Oh, you issued the street stock against it? How many shares of Extension did you and Miss McLean have in your names to start with?

A. How do you mean, to start with?

Q. Well, the first issue? A. None.

Q. Well, then, how much did Mr. Grismer and Mr. Keane have?

A. I wouldn't like to say unless I could see the book. There were too many transactions.

Q. Well, can you tell us approximately?

A. Originally Mr. Grismer had all but 300 shares of the three and a half million issued in his name, I believe, in the Extension.

(Testimony of Irene Vermillion.)

Q. At the time of original issue how much did he have?

A. It was almost two million—no, excuse me—I really can't explain that. It was all in his name, and he donated it back to the treasury.

Q. How much did he actually have before he donated back to the treasury? A. Before?

Q. Yes.

A. Three million four hundred—well, nearly three million five hundred thousand shares, less 300. [168]

Q. What was that issued for originally, if you know? A. How do you mean?

Q. What consideration? A. I don't know

Q. You were an officer of the company?

A. No. You're speaking of Extension?

Q. Were you the secretary or assistant secretary? A. Yes, after the stock had been issued.

Q. Getting back to the question, how much was donated back at that time?

A. I'd have to ask you to let me look at a book or something. I just cannot specify—

Q. Could you give us an approximate amount?

A. Oh, around maybe two million shares; I don't recall exactly.

Q. Maybe how many? A. Two million.

Q. That was part of the organization, wasn't it, that's the way the corporation is formed and the stock set up, is that it?

A. That's the way I understand it.

(Testimony of Irene Vermillion.)

Q. Now, you say that you issued certain of the Grismer stock as directed by Allen? A. Yes.

Q. When was that? [169]

A. From time to time during that period.

Q. Well, when did the first time occur?

I can't tell you.

Q. Would you say it was in June or July?

A. No, the original issue wasn't out at that time.

Q. It wasn't out at that time?

A. You're speaking of 1945?

Q. Did you know the circumstances of that issue of those stocks out of Grismer's stock?

A. What do you mean?

Q. Well, do you know whether or not, of your own knowledge, a consideration passed between Allen and Grismer? A. I don't know.

Q. Do you know the amount of this stock that you issued out of the Grismer stock?

A. Without looking at the book, no.

Q. Huh?

A. Without checking with the books, no.

Q. Isn't it true that the majority of the stock which Allen directed you to issue was Grismer stock?

A. I believe there was—I believe he gave me some instructions regarding Mr. Elmer Johnston's stock.

Q. I'm asking you about the Grismer stock.

(Testimony of Irene Vermillion.)

Isn't it a fact that practically all of the certificates which Allen [170] directed you to issue were issued out of Grismer stock?

A. Mr. Grismer had the largest share, but he directed some out of Mr. Keane's, too.

Q. Well, can you tell us how much you say came out of Mr. Keane's stock?

A. I think Mr. Keane had 500,000 shares; I don't want to be accurate, because I've got to check.

Q. Do you mean Mr. Allen directed you to issue 500,000 shares out of Keane's stock?

A. No, I was going to qualify that.

Q. My question is, how much, in ratio, of that which Mr. Allen directed you to issue came out of Grismer's stock, in proportion?

A. I couldn't testify without looking at the book.

Q. Isn't it true that all of it did?

A. No, part came out of Mr. Keane's, I'm quite sure.

Q. How much?

A. Between 300,000 shares and—

Q. Between what?

A. Between 300,000 and 350,000, approximately.

Q. Well, can you give us anyone to which those were issued?

A. Mrs. French, Miss McLean, and myself.

Q. And is that all?

A. You mean were there any other people, any other names?

(Testimony of Irene Vermillion.)

Q. Yes. [171]

A. Offhand I don't recall.

Q. Now, how much of the attorney's stock was carried in Allen's name?

A. None that I know of.

Q. None that you know of. How much was carried in Keane's name?

A. His own 500,000 shares.

Q. That was the attorney's stock?

A. Well, that was the stock that was issued to him as attorney. Now, what do you mean by attorney? Maybe I misunderstand you; what attorneys do you mean?

Q. The attorney's stock issued to Keane.

A. I believe that was 500,000 shares.

Q. You think that was 500,000 shares. What other stock, if any, did Keane have besides that?

A. You mean in the Extension?

Q. That's right; we're talking about Extension.

A. I don't know that he had any more than that.

Q. Do you know whether he had any other or not? A. No, I don't know.

Q. Your employment was as a secretary, a stenographer for Mr. Keane, wasn't it?

A. That's right.

Q. And your services were acting as secretary for a number of corporations for him, or assistant secretary? [172]

A. No, I was strictly a legal secretary, if I understand your question.

(Testimony of Irene Vermillion.)

Q. What's that?

A. I was just a legal secretary, if I understand your question.

Q. Just a legal secretary? A. Yes.

Q. Well, I think there are a large number of corporations who had their offices there, that Mr. Keane was interested in? A. Yes.

Q. How many were there?

A. At what time? We had as high as seven at one time.

Q. At the time of the occurrence of the Extension.

A. Now, would you want to specify? I don't want to say Montana Leasing, and Independence—is that the way you want it?

Q. Well, Montana Leasing, did you have the books of the Montana Leasing there?

A. We had the records of the Montana Leasing.

Q. All right, what other one?

A. Independence Lead Mines.

Q. Independence? A. Yes.

Q. What's the full name of that corporation?

A. Independence Lead Mines Company.

Q. You had the books of that corporation there?

A. We had the records.

Q. That's the bank books and the others?

A. Yes.

Q. The records. What other corporations?

A. And the Extension, Lucky Friday Extension.

Q. What's that?

A. The Lucky Friday Extension, those three.

(Testimony of Irene Vermillion.)

Q. The Lucky Friday Extension was organized in that office. What other ones?

A. Now, this is at the time the Extension was organized, is that what you're asking me?

Q. Yes. A. That's all.

Q. 1945?

A. 1945, in the summer of 1945, three.

Q. What?

A. There were three in the summer of 1945.

Q. Three were organized, and what were they?

A. No, I misunderstood you. We had three companies in the office in the summer of 1945.

Q. And they were the Extension—

A. Independence, Montana Leasing.

Q. —and Montana Leasing and the Independence. Did you have the Coeur d'Alene Mines?

A. No. [174]

Q. When was that organized?

A. The Coeur d'Alene Mines has no connection with this office.

Q. Did you have the Coeur d'Alene Consolidated in the office?

A. We had the Articles of Incorporation and a couple of agreements in 1946, I believe.

Q. Now, in that office you had all of the bank statements, didn't you, from the time of its incorporation, of the Extension? A. Yes.

Q. All of the bank records? A. Yes.

Q. That's right; and they remained there until they were taken over under subpoena by the S.E.C., didn't they? A. No.

(Testimony of Irene Vermillion.)

Q. Or taken over after—that's right—taken over after the directorship changed?

A. If you want to put it that way, yes.

Q. They stayed there, then, until what time?

The Court: Are you speaking of the records of the Extension?

Q. Of the Extension, your Honor.

A. Sometime in December, 1946.

Q. December, 1946? A. Yes.

Q. And the records which came to court here were procured [175] from where, the bank books, do you know, in relation to the Extension, the bank records of the Extension, where did they come from?

A. Our office, I believe.

Q. Yes; that part of the records was kept in your office, then, when the other directors took over, weren't they, the other officers? A. Yes.

Q. That's right, and they were there at all times, weren't they, until they were subpoenaed by the S.E.C.? A. Yes.

Q. That's right; as a matter of fact, Mr. Allen wasn't given access to those records at all, was he?

A. Up until December, 1946, he could have seen them any time he wished.

Q. Isn't it a fact that on a number of times you refused to let him see them?

A. Not up to, say, September, 1946, if he had asked.

Q. Up to when? A. September, 1946.

Q. September, 1946; you hadn't refused prior to

(Testimony of Irene Vermillion.)

that time to permit him to see those books, the bank books?

A. Any time he wanted to he could have seen them.

Q. Did he ever make demand on you prior to that time to see them? [176]

A. Oh, I think he looked at them; I don't recall.

Q. You don't know that he did, though?

A. No formal demand.

Q. As a matter of fact, that financing end, that part of it, the bank records and such, were handled by Mr. Keane, weren't they?

A. They were in that office.

Q. The records were kept by Mr. Keane and his assistants, that's correct, isn't it? A. Yes.

Q. In September, 1946, how many corporations were there in that office?

A. I couldn't say; probably five or six.

Q. You worked as a secretary there?

A. I mean, there were so many, and when you say corporations, do you mean formally formed, or to which they had just—

Q. To which that office had the records.

A. There were several corporations which had the Articles of Incorporation filed with the State of Idaho, but that was all; there was nothing else done with them.

Q. And then there were several where you had the other books, weren't there?

A. There would be one more besides the three I told you before.

(Testimony of Irene Vermillion.)

- Q. And which one was that?
- A. That was the Pilot. [177]
- Q. Just the Pilot and the Extension?
- A. That's right.
- Q. Didn't you have the books of the Independence there?
- A. I misunderstood you. The four, the Montana Leasing, or Lexington, whichever you wish to call it; Independence; Pilot; and Extension.
- Q. Delaware didn't have the books there?
- A. We had some checks of the Delaware in our safe which had been countersigned by Mr. Allen, I believe, but we had no other records.
- The Court: What was that?
- A. Checks.
- The Court: Of the Delaware?
- A. Delaware; I think it's Delaware Mines.
- Q. Now, as to the Extension, all corporate records were kept in Mr. Keane's office?
- A. Yes.
- Q. All bank records were kept there?
- A. Yes.
- Q. All deposits were made through that office?
- A. Yes.
- Q. And the checks drawn by you or Mr. Keane?
- A. Yes.
- Q. No checks were drawn by Mr. Allen?
- A. No. [178]
- Q. Now, as to the Pilot, after its organization, where was that office kept?

(Testimony of Irene Vermillion.)

A. Mr. Keane's office.

Q. Mr. Keane's office; were the books kept there?

A. Yes.

Q. Bank records kept there? A. Yes.

Q. And bank deposits made by persons in that office? A. Yes.

Q. And checks drawn by persons in that office?

A. Yes.

Q. Mr. Allen had nothing to do with those transactions? A. No.

Q. Now, there's a large number of checks referred to here this morning and yesterday, and on each one of those you were asked who directed you or instructed you to make them, that's true, isn't it, that's pretty much the testimony?

A. As a whole, yes; not specific checks.

Q. And in each case you answered "Allen and Keane" or "Keane and Allen"?

A. That's right.

Q. And of course, you consulted them each time— A. No.

Q. —that you wrote a check?

A. No. [179]

Q. Did you consult with them each time you made a deposit? A. No.

Q. You didn't consult them each time that you drew a check requested by Mr. Keane, did you?

A. No.

Q. Or any other checks relating to that business? A. You mean just the Extension?

(Testimony of Irene Vermillion.)

Q. Mr. Keane was your boss?

A. And Mr. Allen, as regards the Extension.

Q. And he was in direct control of that office at all times, wasn't he?

A. Mr. Allen could tell me what to do with the Extension and Montana Leasing Company.

Q. How long have you worked for Mr. Keane?

A. Five years.

Q. Five years; and he's organized quite a large number of corporations during that time, while you were employed by him?

A. There were quite a large number of corporations organized since I've been there.

Q. Yes, and with relation to the Montana Leasing, he didn't organize that, I believe it was a Montana corporation?

A. I don't know. That was before my time.

Q. What?

A. That was before I came there; I don't know about that. [180]

Q. The Montana Leasing was organized before you came? A. That's right.

Q. As to your remuneration after the Extension was formed, how much money were you receiving for your services in that office?

A. From Mr. Keane?

Q. From any source.

A. \$175.00, I think, at that time.

Q. How much?

A. I think \$175.00 at that time.

Q. Exclusive of the stock?

(Testimony of Irene Vermillion.)

A. That's right.

Q. And how was that broken up, how was it paid? A. Just from Mr. Keane.

Q. Mr. Keane paid it; did you receive any checks from the Extension for your services?

A. I just assisted in the Extension. Mr. Evans did the work in the Extension.

Q. Did you receive any checks for your services from that company? A. No.

Q. You didn't receive anything?

A. No, no checks.

Q. The only remuneration you received for your services for the Extension was the stock, is that correct? [181] A. As I say, that's right.

Q. The rest you received directly from Mr. Keane?

A. It was the salary he had started to pay me when I first started to work for him.

Q. What's that?

A. It's the same salary I had received when I first started to work for him.

Q. He didn't raise that?

A. Not at the time of the Extension. I got \$200.00 a month later on, but I can't remember just what month I got that raise in.

Q. But that wasn't paid by the Extension?

A. No.

Q. Nor by the Pilot? A. No.

Q. But Mr. Keane paid you your salary for doing all the work in both these companies?

(Testimony of Irene Vermillion.)

A. No, I didn't do the work in the Extension.

Q. You what?

A. I didn't do the work in the Extension.

Q. Did you do any work in the Extension?

A. A small amount.

Q. Did you keep any books? A. No.

Q. Did you sign any checks? [182]

A. Yes.

Q. What would you do when you signed a check, would you enter it into the stub book?

A. Yes, that's all I did.

Q. That's all you did?

A. Perhaps I had better make that clear; Mr. Evans handled all the stock work, the heavy work of the Extension, and checked the checks that came in, and so forth.

Q. Were you ever an officer in the Extension?

A. I signed, oh, something, as an assistant secretary when Mr. Evans was ill, on two or three occasions, I think it was something for the government, either income tax form or something of that sort.

Q. You don't know what that form was?

A. I think one was to get the unemployment compensation form.

Q. You did sign that as assistant secretary?

A. I did once or twice when Mr. Evans wasn't there; it was just a matter of convenience.

Q. Mr. Allen didn't pay you for that?

A. No one paid me for that.

Q. Didn't direct you to do that?

A. Not specifically.

(Testimony of Irene Vermillion.)

Q. Well, now, did Mr. Allen specifically direct you to do anything?

A. In the office he would come in and tell me to make out [183] certain certificates, call me on the phone; we had a great many phone conversations.

Q. And that was in relation to the issuance of this Grismer stock?

A. To the issuance of stock.

Q. Huh? A. To the issuance of stock, yes.

Q. But that was after all of the first issue had been issued, wasn't it?

A. I'm not clear on what you mean.

Q. You know when the first issue was put out?

A. Yes.

Q. Now, these conversations, as you I think have stated before, were all after that?

A. Yes, I think I didn't issue any stock until after the original offering was completed.

Q. Had been completed? A. Yes.

Q. And those conversations which you have talked about were in relation to the issuance of stock that belonged to Mr. Grismer and which Mr. Allen acquired, or other stock belonging to Keane, is that true?

A. To Mr. Keane's and Mr. Grismer's stock, yes, that's what the conversations were.

Q. What other employments did you follow at that time? [184]

A. Pardon?

Q. What other employment, if any, did you follow at that time?

(Testimony of Irene Vermillion.)

A. I am court reporter for Judge Featherstone since 1945.

Q. From when? A. June 1, 1945.

Q. About the time you were acting as secretary to Mr. Keane? A. Yes.

Q. And you still are? A. Yes.

Q. Now, Mr. Featherstone is one of the stockholders of the Lucky Friday Extension, isn't he?

A. I'm not sure.

Q. You're not sure?

A. No, I don't know. I haven't seen the books for some time.

Q. Huh?

A. I haven't seen the books for some time.

Q. Well, he was for a long time, wasn't he?

A. I don't know how long, but he had some stock.

Q. Did you see Mr.—Judge Featherstone in the office there frequently, in your office, the Keane office? A. No.

Q. Did you know whether or not he was a director associated with Mr. Keane in some companies there, Big Friday, for instance?

A. I don't know anything about the Big Friday. [185]

Q. Don't know anything about it?

A. Just what you read in the newspapers.

Q. Do you know whether Mr. Keane was a director with Mr. Featherstone in any of those corporations?

(Testimony of Irene Vermillion.)

A. He may have been, but I wouldn't know definitely.

Q. You wouldn't know that? He used to come in and consult quite a bit with Mr. Keane, didn't he?

A. I don't think I've seen him in our office more than five or six times.

Q. During what period?

A. During the period I've been there.

Q. Since 1945? A. 1944.

Q. Is that correct? A. Since 1944, yes.

Q. Did you act as secretary for Mr. Keane in connection with the Delaware Mines Company?

A. How do you mean? We never did—

Q. Well, did you make deposits of bank accounts for the Delaware?

A. I occasionally did.

Q. Write up the minutes? A. No.

Q. Write up any other corporate papers?

A. No. [186]

Q. Did you make deposits of smelter checks?

A. Yes.

Q. To the account of the Delaware Mines?

A. Yes.

Q. You did; that's also true of the Montana Leasing? A. Yes.

Q. And the Lexington Silver Lead Mines?

A. Yes.

Q. And when you made deposits of the Delaware Mines Corporation checks what did you enter those in?

(Testimony of Irene Vermillion.)

A. Nothing. We just kept the duplicate stub, or duplicate deposit slip.

Q. You just kept a duplicate deposit slip; and what did you do with those?

A. Just kept them in a book, in their own little book.

Q. Kept them in a book, and that was the record of the Delaware Mines bank account, was it?

A. As far as I know.

Q. You had authority to make deposits?

A. Well, I was directed to make deposits, ordinarily.

Q. And you got the monthly statements?

A. Picked them up, yes.

Q. Now, those are the monthly statements of the Delaware Mines Corporation I'm speaking of.

A. Yes. [187]

Q. You'd get those? A. Yes.

Q. Take them to Keane's office?

A. I picked up all the bank statements with every one connected, yes.

Q. You picked up the bank statements on the Delaware, the Pilot, and the Extension?

A. The Delaware, Pilot, Extension, Independence, F. C. Keane, J. A. Allen.

Q. And kept them in Keane's office?

A. Yes, until Mr. Allen—

Q. They were never picked up by you and delivered to Allen?

A. I would leave his in the Callahan Consolidated office.

(Testimony of Irene Vermillion.)

Q. And whose office was that?

A. Mr. Allen was often in there.

Q. Huh?

A. Mr. Allen always was in there when he was in Wallace.

Q. Well, whose office was that?

A. Callahan Consolidated.

Q. Was that the corporation's office?

A. That belongs to the Callahan Consolidated.

Q. Were there some attorneys in that?

A. That's just a mining company, Mr. Callahan.

Miss McLean was in there; is that what you mean?

Q. Yes; who else besides Allen? [188]

A. Mr. Callahan, and Miss McLean, Mrs. French.

Q. Did you ever have the authority from Mr. Allen to sign any checks? A. Yes.

Q. What? A. Yes.

Q. On what company?

A. He told me "You can sign anything any time."

Q. He told you to sign on any of them; when was that?

A. Oh, it must have been sometime in the summer of 1945.

Q. Now, you say possibly?

A. Well, it's sometime during that year; I don't recall the time exactly.

Q. And was that in writing? A. No.

Q. And what was the occasion of his giving you those instructions?

(Testimony of Irene Vermillion.)

A. I think that we were—they were going—Mr. Allen and Mr. Keane were going to Montana, to the Montana Leasing Company.

Q. And when you say “any of the companies” which companies do you mean?

A. Montana Leasing, Extension.

Q. Just Montana Leasing; did you ever have any authority to sign checks for Mr. Allen in connection with the Extension [189] or the Pilot?

A. Yes.

Q. You did; did you ever do so?

A. Yes.

Q. And they were the company checks, were they? A. Yes.

Q. Issued by either one of these companies, the Pilot or the Extension? A. Yes.

Q. How frequently did you do that?

A. I don’t understand your question; how frequently did I make the checks? That I wouldn’t know; the dates are on the checks.

Q. I want to clarify that. I started out this examination asking if Allen ever gave you authority to sign his name.

A. He once told me I could sign anything, and I have signed it on request for an extension of time in an income tax, and a few things like that.

Q. But not on checks?

A. No, I never used that.

Q. At no time? A. No.

Q. Well, that clears it up; there was a misunderstanding between us. A. I’m sorry. [190]

(Testimony of Irene Vermillion.)

Q. And whenever you made a deposit, a bank deposit, for Mr. Allen, it was by a check of his own which he left, or a check which he endorsed and left with you to deposit?

A. Would you clarify that question? I don't think I understand it. I heard it, but I just don't understand it.

Q. Well, did you ever make any bank deposits for Mr. Allen? A. Quite often.

Q. And those were checks which were made to him or endorsed by him, is that correct?

A. They were made out to him.

Q. Yes, and they were either deposited unendorsed, for deposit, or endorsed by him?

A. Mostly they were—the ones I handled were just endorsed by deposit, I just deposited them.

Q. Yes, that was the only endorsement on them. Now, were you on the board of directors of the Extension at any time? A. No.

Q. Did you attend the directors' meetings?

A. No.

Q. Did you write up the minutes?

A. I don't remember whether there were any.

Q. Huh?

A. I don't remember whether there were any.

Q. Do you know whether or not, to your own knowledge, Mr. Keane was authorized to make investments with the Extension [191] funds?

A. I don't know.

Q. You don't know. Do you know anything in

(Testimony of Irene Vermillion.)

relation to his authority in the Pilot in that regard?

A. No.

Q. Are you or have you been an officer in the past of the Pilot? A. Yes.

Q. When did that office cease?

A. I don't remember. Sometime in the early part of 1947.

Q. Did you attend any meetings of the board of directors of the Pilot?

A. Oh, I took the minutes of the first meeting.

Q. Just the first meeting; that was the organization meeting?

A. Yes, I guess you'd call it that.

Q. And did you take the minutes of that?

A. Yes.

Q. They were kept correctly?

A. As far as they went.

Q. To the best of your ability; and do you remember who attended that meeting?

A. No, I really don't.

Q. You don't remember. Now, when did you cease being an officer of the Pilot?

A. Well, I think it was the early part of 1947; I'm not sure. [192]

Q. Huh?

A. I think it was the early part of 1947; I'm not sure of the date.

Q. Did you resign?

A. Yes; very happy to.

Q. And who instructed you to resign?

(Testimony of Irene Vermillion.)

A. Mr. Keane.

Q. Mr. Keane?

A. Mr. Keane and I resigned at the same time.

Q. And he resigned at the same time?

A. Yes, I typed up both resignations.

Q. And the books of the corporation, with the exception of the bank books, were then turned over to Mr. Allen, weren't they?

A. Well, they were taken into the Callahan Consolidated office, yes.

Q. Was Mr. Allen there at that time?

A. I don't remember whether he was or not.

Q. Isn't it a fact that your resignation and Mr. Keane's resignation came about by reason of the fact that Mr. Keane refused to permit Mr. Allen to see the bank balances and the books of account of that corporation?

Mr. Stocking: We'll object to that as improper cross-examination. I don't think we touched on that in the direct. [193]

The Court: Just a moment; if it was on account of some action of hers, whether it touched or not, it would be proper as going to her interest, but I'm not at all clear that she can be cross-examined on something she didn't testify concerning on direct, when it applies to somebody else. I'm inclined to think the objection is well taken.

Mr. Emigh: She was an officer, your Honor.

The Court: I know, but you're asking her if Mr. Keane had refused to do something. She

(Testimony of Irene Vermillion.)  
wasn't examined on that on direct. It doesn't go to her personal interest.

Mr. Emigh: May I reframe that question?

The Court: You may put another question.

Q. (By Mr. Emigh): Isn't it a fact that the officers of the corporation had refused, including yourself, had refused to permit Mr. Allen to see the bank balances and the bank books of that corporation, which led about to the demand of your resignations?

A. Mr. Allen never asked me for them.

Q. He never asked you to see the bank balance?

A. Mr. Grismer came in and asked in his name.

Q. Mr. Grismer did? A. Yes.

Q. And you refused to permit him—

The Court: Which company is this, the Extension or [194] the Pilot?

A. I think we're on the Pilot right now.

Q. Mr. Grismer did? A. Yes.

Q. And you refused to permit him?

A. Yes.

Q. That's correct? A. Yes.

Q. And was he an officer or director of the company at that time?

A. I think he was manager.

Q. Manager?

A. That is, he went up to the mine, and so on.

Q. Was he a stockholder? A. Yes.

Q. He was a stockholder; and then you refused

(Testimony of Irene Vermillion.)

to permit a stockholder to see the records at that time? A. I refused Mr. Grismer.

Q. And he was a stockholder? A. Yes.

Mr. Emigh: May we have a recess at this time, your Honor?

The Court: Yes, there will be a ten minute recess.

(Short recess.)

(All parties present as before, and the trial was [195] resumed.)

#### Cross-Examination

(Continued)

By Mr. Emigh:

Q. Calling your attention to Plaintiff's exhibit 14 for identification, I'll ask you if you made the deposit shown on the first sheet? A. No.

Q. In January, 1946, and particularly prior to the 4th day of January, 1946, I believe that you and Mr. Keane were the only ones who had access to the bank account?

A. What are we talking about now?

Q. The bank account of the Extension.

A. You mean we were the only ones that signed the checks?

Q. No, had the access to the account, the ones that were in charge of that account, you got the statements and deposited the checks and those things?

A. Well, access isn't the word I'd use. We were

(Testimony of Irene Vermillion.)

the ones that wrote the checks and deposited and picked them up, but Mr. Allen could have seen them any time he wished, is that what you want to know?

Q. I want to know if you could see it any time you wished? A. Oh, yes.

Q. The financial statement? A. Oh, yes.

Q. And I'll ask you if on the 4th day of January, 1946, you prepared a financial statement of the Extension showing a [196] bank account of \$51,047.92?

A. No, I never prepared any financial statements.

Q. Did you type it? A. I don't recall it.

Q. You don't recall it? A. No.

Q. You wouldn't know whether you typed it or not? A. Not without seeing it.

Mr. Emigh: Have you got that statement here, please?

Mr. Stocking: I'll get it for you. I'll have them get it.

Mr. Emigh: He's getting that exhibit, your Honor please.

Q. Were you familiar with the Clayton Silver Mines in 1945?

A. No—what do you mean by familiar? I knew that there was such a place.

Q. Well, do you know about their offices, and where they were? A. Yes, I knew that.

Q. Was that adjoining your office?

A. For a short time.

(Testimony of Irene Vermillion.)

Q. And when was that?

The Court: What company was this?

A. Clayton Silver Mines. [197]

Q. And Mr. Keane, was he an officer in that?

A. No, I don't believe so.

Q. Was Mr. Featherstone, to your knowledge?

A. I think he was.

Q. And at that time did the Independence Lead  
Mines have an office in Mr. Keane's office?

A. Yes.

Q. Huh? A. Yes.

Q. And he was president of that, was he?

A. Mr. Keane?

Q. Yes. A. Yes.

The Court: What company was this?

A. Independence Lead Mines.

\* \* \*

(Whereupon, statutory statements filed by Extension with State of Washington were marked Defendant's Exhibit "A" for identification.)

Q. I'll call your attention to Defendant's exhibit A, for [198] identification, and ask you to look at that carefully and state whether or not that is an instrument which you typed at the request of Mr. Keane or Mr. Evans?

A. Just this much, or all through the whole thing?

Q. Yes. A. None of that is my typing.

.

(Testimony of Irene Vermillion.)

Q. You had nothing to do with that exhibit, preparing it?

A. There's some copies of the Articles of Incorporation in there.

Q. The forms which have been filled in blank, are any of these typed by you? A. No.

Q. And the sheets in here prepared as to copies, those copies, that is, where they're typewritten pages, may have been prepared by you, is that what you're driving at, the Articles of Incorporation?

A. Well, that would be the only thing I might have.

Mr. Stocking: We'll have no objection to the exhibit being offered in evidence. We'll stipulate as to its identification.

Mr. Emigh: I don't believe for the purpose of this examination it would be competent.

A. No, that isn't our machine; I didn't type that.

Q. You had nothing to do with that, know nothing about it, the preparation of it, know nothing about typing it? [199] A. No.

Q. Did you secure the information which is given in this? Did you furnish that information to somebody who did type it? A. I don't know.

Q. You mean you don't remember, or didn't know? A. That's it, I don't remember.

Q. Do you know whether or not this is typed on the typewriter in your office?

A. No, that print is too small for ours.

Q. Did you have anything to do with this exhibit so far as you know?

(Testimony of Irene Vermillion.)

A. Well, yes, I see my name on it.

Q. You see your name on it; you signed an oath to that certificate, didn't you, to that exhibit?

A. Yes.

Q. In that oath you swore that you are of lawful age, that you had read the statements contained in that instrument, and they were true, didn't you?

A. Yes, if that's what it says.

Mr. Emigh: We offer defendant's exhibit A for identification in evidence.

Mr. Stocking: We have no objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit A for identification was [200] admitted in evidence.)

Q. At whose request did you sign this, Mrs. Vermillion? A. I think it was Elmer Johnston.

Q. You think it was?

A. I can't be specific. I remember the circumstances—

Q. To refresh your memory—

Mr. Stocking: Just a moment, let her finish her answer, if the Court please.

A. I remember the circumstances, the reason I signed it, but I don't recall just who asked me to sign it.

Mr. Emigh: At this time, may it please the Court, the defendant offers in evidence that portion of page 1 of Plaintiff's exhibit 7 for identification relating to the balance in the bank of the Lucky Friday

(Testimony of Irene Vermillion.)

Extension on the 29th day of December, 1945, and the 3rd day of January, 1946.

Mr. Stocking: We prefer to have the whole exhibit admitted, your Honor.

The Court: Well, forgetting preference, do you object to this?

Mr. Stocking: I don't think we can make any objection to the portion of it.

The Court: Well, the portion will go in.

Mr. Emigh: We're only offering the portion.

The Court: The portion offered by the defendant admitted, no objection by the government.

(Whereupon, bank statement, Extension Company, January, 1946, was marked Defendant's Exhibit B.)

Q. Mrs. Vermillion, the first time I asked about your signature it was in relation to a document that seems to terminate—there doesn't seem to be any page numbers on this. One is exhibit 7, and the other one here again, that is also your signature, as of date May 1, 1946? A. Yes.

Mr. Emigh: Ladies and gentlemen of the jury, Defendant's Exhibit A, the portion of it which at this time is called to the attention of the jury, is a page, if I can find it again, marked exhibit 7, and to which is appended—I've lost my place again.

Mr. Stocking: I think it's referred to as the annual statement.

Mr. Emigh: Well, there's a question of how

(Testimony of Irene Vermillion.)

much of this is one sheet and how much another. I hope the Court will bear with me. I didn't have it marked, so I can't keep my place. It is part of an annual report of Metalliferous Mining Company, and Annual Statement, which has a stamp "Received May 7." It refers to the Lucky Friday Extension Company, address Gyde Taylor Building, Wallace, Idaho, for the year ending December 31, 1945. [202] Among the information contained in that sheet is a statement of assets of the corporation, under the heading cash, are the figures \$51,077.92, and that instrument has the following oath attached: "State of Idaho, County of Shoshone, ss. Joseph V. Grismer, President, and Irene Vermillion, Asst. Secretary of the Lucky Friday Extension Mining Company, of lawful age, being first duly sworn, depose and say they have each read the foregoing statements and know the contents thereof, and that the statements and allegations therein contained are true." Signatures J. V. Grismer, President, Irene Vermillion, Assistant Secretary. The Assistant is abbreviated "Asst." "Subscribed and sworn to before me this 1st day of May, 1946. My commission expires Sep. 29, 1948. James E. Gyde, Notary Public in and for the State of Idaho, residing in Wallace, Idaho."

That portion of Plaintiff's exhibit 7 for identification which has now become Defendant's exhibit B, admitted in evidence, is a bank statement from the Wallace Branch of the Idaho First National

(Testimony of Irene Vermillion.)

Bank, Wallace, Idaho. "Lucky Friday Extension, c/o F. C. Keane, Wallace, Idaho." On the first line of that statement, under the item, "The last item in this column is your balance" December 29, 1945, \$9,333.92. The next line is January 3, 1946. Under the item "Balance" are three items. The balance item is [203] \$2,000.00, another item is \$122.80, another item is \$163.20, and over in the right hand, last item in this column is your balance, January 3, 1946, \$7,047.92. I think that's all.

#### Redirect Examination

By Mr. Stocking:

Mr. Stocking: Referring to Defendant's Exhibit A, and attached to the annual statement, gentlemen of the jury, to which counsel just referred, is the following letter dated May 4, 1946: "Director of Licenses, Olympia, Washington. Re: Lucky Friday Extension Mining Co. Dear Sir: Herewith please find verifying annual statement prepared by this company pursuant to the Metalliferous Mining Act of Washington for your examination and files. I also enclose herewith \$5.00 fee in connection with the filing of this statement. If the statement meets the requirements of your office, kindly have the same duly accepted and filed and return two copies to this office in the usual manner. Yours very truly, Elmer E. Johnston" and it's written on the stationery of Elmer E. Johnston, Attorney at Law, Symons Building, Spokane, Washington.

Q. Mrs. Vermillion, what were the circumstances

(Testimony of Irene Vermillion.)

of your signing this Metalliferous Mining Company annual statement, which is contained in Defendant's Exhibit A, if you recall?

A. Mr. Johnston prepared those statements in his office, or [204] at least we had never received the forms in our office, and that particular form was mailed to Mr. Keane's office, and I was told to have Mr. Grismer and Mr. Evans sign it, because it was important that it be mailed in before a certain date; I don't recall the date.

Q. And who gave you those instructions?

A. I believe Mr. Johnston.

Q. Was that verbal or written?

A. I couldn't find any letter, so it must have been—it may have been verbal. He often phoned me; but Mr. Evans was very ill, he suffered a cerebral hemorrhage, and was very ill. We went down to the hospital, Mr. Grismer and I, and took Mr. Gyde along to see if we could get Mr. Evans to sign that, but he was so ill that he couldn't sign it, he was very ill, they didn't think he was going to live, so we came back, Mr. Grismer signed it, and they asked me to sign it; I don't recall whether it was Mr. Grismer or Mr. Keane asked me to sign it as assistant secretary so that we could get that filed on time, and I did.

Q. And did you have anything to do at all with the preparation of the figures that went into the statement? A. No, not that I recall.

Q. Did you at that time attempt to determine

(Testimony of Irene Vermillion.)

what the cash assets of the company were as of December 31, 1945?

A. No; this came in in the afternoon, and we had about just a [205] few minutes before train time. It was just a big dash.

Q. Had you up to that time acted in any capacity as an officer of the company in preparing any of the financial information which had been furnished to the State of Washington? A. No.

Q. For the Extension Company? A. No.

Mr. Stocking: I'll call the attention of the jury to another portion of this Defendant's Exhibit A, being a statutory statement filed by a Metalliferous Mining Company bearing the stamp "Received January 22, 1946" and the statement shows "Date filed, January 31, 1946" and referring to the exhibit 7 of that statutory statement, the figure under amount "Cash in Banks, \$51,047.92" under the heading "Statement of Assets and Liabilities as of the 5th day of January, 1946" this figure corresponding to the figure on the other exhibit with the exception that it is \$51,047.92 where the other figure is \$51,077.92.

Q. I'll ask you, Mrs. Vermillion, if you had anything to do with the preparation of this statutory statement which was filed in January, 1946?

A. Not that I recall.

Q. And your signature does not appear at the end of that statement? [206] A. No.

Q. Did you ever make an audit of the Extension

(Testimony of Irene Vermillion.)

books at any time that you were handling their checking account and banking account?

A. No.

Q. Do you know if any such audit was ever made during that period and prior to the 1st of May, 1946, when you signed this paper?

A. I don't know of one.

Q. You hadn't seen a balance sheet prepared by anyone at that time, is that correct?

A. That's correct.

Q. Referring to the books of account to which you made some reference in Mr. Emigh's cross-examination, were there any other books of account for either the Extension or the Pilot than the records which appear here and have been identified and offered in evidence? A. Yes.

Q. What books were they?

A. There was a stock ledger which recorded the transfers of stock.

Q. And were there any other books, to your knowledge? A. No, not to my knowledge.

The Court: What do you call that?

A. Stock ledger, stock transfer ledger. [207]

Q. There were no other books which reflected the receipt and disbursement of funds?

A. No.

Q. And that's true as to both Pilot and Extension? A. Yes.

Q. What is your statement as to whether or not, until the time when you resigned as an officer of the

(Testimony of Irene Vermillion.)  
Pilot Company, there had ever been an audit made of the corporation's books, of the Pilot books?

A. I don't recall one.

Q. To your knowledge no such audit has ever been made, is that correct?

The Court: That's the Pilot?

Q. The Pilot books, when she resigned. When you answered Mr. Emigh on cross-examination to the effect that you had no conversations with Mr. Allen until after the original stock was issued, specifically what were you referring to, Mrs. Vermillion?

A. To the issuance of stock in that so-called "street stock" in Mrs. McLean's and my name.

Q. You're not referring to any conversations you may have had with him concerning instructions as to issuing checks?

Mr. Emigh: Just a minute; that's objected to as leading and suggestive.

The Court: Overruled. [208]

Mr. Emigh: And not proper redirect examination.

The Court: Overruled.

Mr. Emigh: Exception.

A. I had instructions on checks as regards Montana Leasing Company long before that.

Q. And had you ever had any instructions with regard to Extension prior to the time that the original issue of stock was completed?

Mr. Emigh: Same objection, on the ground it's

(Testimony of Irene Vermillion.)

leading, suggestive, indefinite as to persons involved, and not proper redirect examination.

The Court: Let me hear the question.

(Whereupon, the reporter read the last previous question.)

The Court: Overruled; you may answer.

A. I'm trying to think of how to, Judge. I really don't remember definitely.

Q. You stated on cross-examination that you made some deposits of funds for Mr. Allen. Do you recall what checks those were, where those checks came from, who was the issuer of those checks?

A. From Mr. Keane and the Montana Leasing.

Q. And those were deposits that you made for Mr. Allen in his personal account? A. Yes.

Q. To your knowledge did either the Pilot or the Extension Company ever hold a directors' meeting when you were connected with those companies, with the exception of the meeting at which you resigned in Pilot?

A. Not in the sense of formal meetings, that I know of, no.

Q. Were minutes ever prepared of any meetings that were held?

A. Just the one in the Pilot that I mentioned.

Q. And did the company ever keep a minute book, either company ever keep a minute book?

A. Keep them as to date, you mean?

Q. Yes. A. No.

(Testimony of Irene Vermillion.)

Q. You testified on cross-examination that you did refuse to give the Pilot records to Mr. Grismer in the fall of 1946. Who if anyone gave you instructions to refuse those records to Mr. Grismer?

A. Mr. Keane and Mr. Allen both specifically gave me instructions never to give Mr. Grismer anything.

Q. And did that apply to—which corporation, or did it apply to both?

A. That applies to both.

Q. Both Pilot and Extension?

A. Yes.

Mr. Stocking: That's all. [210]

#### Recross-Examination

By Mr. Emigh:

Q. Mr. Keane and Mr. Allen—

A. Yes.

Q. —gave you instructions—

A. Yes.

Q. —not to give Mr. Grismer any information?

A. Yes.

Q. When were those instructions given to you?

A. Sometime I believe, in one definite one, in Extension, sometime in August of 1946. Mr. Grismer came in and wanted to look at some—oh, he wanted to look at the stock bonds, and I mentioned that to Mr. Keane and Mr. Allen, and Mr. Allen said never to give that Dutchman anything, except there were a couple of words that I omitted.

Q. Isn't it true that beginning in October, 1946, that Mr. Grismer and Mr. Allen made repeated

(Testimony of Irene Vermillion.)

demands upon Keane to make a disclosure of this bank account?

A. I don't know what they made upon Mr. Keane.

Q. What?

A. I don't know what demands they made upon Mr. Keane.

Q. You don't know?

A. I wasn't present at any time when they made demands on Mr. Keane, that I recall.

Q. You don't know anything about that. Did Mr. Grismer or [211] Mr. Allen make demands on you? A. Mr. Grismer made demands on me.

Q. Isn't it a fact Mr. Allen did?

A. I don't remember that he ever did.

Q. You don't remember; he may have?

A. I don't remember that he ever did.

Q. Now, what records did the Extension keep in relation to the bank accounts?

A. I don't understand you.

Q. What records did the Extension keep in relation to bank accounts?

A. Just the bank statement and the bank book—and the check book.

Q. Who went to the bank and got that statement? A. I brought them back.

Q. And I think you have testified here that when you brought them back you checked them against the checks which accompanied the statements, that's correct, isn't it?

A. Just to see the outstanding checks, that's all.

(Testimony of Irene Vermillion.)

Q. And of course thereby you became familiar with the balance that you had from month to month? A. Yes.

Q. As disclosed by the only record the company had? A. That's right.

Q. Now, when you signed this affidavit that on December 31, [212] 1945—

Mr. Stocking: Just a moment; I object to that, your Honor. She didn't sign it on December 31, 1945.

Q. (Mr. Emigh, continuing): —that as of December 31, 1945, you got that, Mr. Reporter, that as of December 31, 1945, the bank balance of the Lucky Friday Extension Mining Company was \$51,077.92— A. Yes.

Q. —at that time you had received the—been the person that went to the bank and got the balance for the month of December, showing the balance there, hadn't you? A. Yes.

Q. And when you signed that you read the affidavit?

A. I don't believe that I did. It was in a rush.

Q. You knew it was being sworn to before a notary public— A. Yes.

Q. —Mr. Gyde, and it was sworn to before a notary public? A. Yes. It's right at the end.

Mr. Emigh: That's all.

#### Redirect Examination

By Mr. Stocking:

Q. As a matter of fact, Mrs. Vermillion, a large

(Testimony of Irene Vermillion.)

sum of money came from the brokers, as disclosed in plaintiff's exhibits 1, 2 and 3, during the month of January, 1946, into the Extension account, isn't that correct?

Mr. Emigh: Just a moment—— [213]

The Court: Just a moment; is there objection?

Mr. Emigh: It's apparently subsequent to the time of this statement, objected to as incompetent, irrelevant and immaterial, what came in later; this is a statement as to a balance that existed on a specific date.

Mr. Stocking: Yes, of course; the point is, your Honor, that her signature was put on here four months——

The Court: Well, you may ask her, counsel; I say you may ask her. I think you had better redraw the question.

Q. (By Mr. Stocking): Do you know whether or not substantial sums came from underwriters in connection with the second offering of Extension stock in the month of January, 1946?

A. Yes.

Mr. Emigh: To which the defendant objects that in relation to this examination it's incompetent, irrelevant, and immaterial, not proper redirect examination, and an attempt by this examination of this witness to impeach her own oath signed, and her testimony heretofore given.

The Court: Objection overruled. The jury is entitled to all of the evidence, to determine whether or not——

(Testimony of Irene Vermillion.)

Mr. Emigh: Exception.

The Court: —under all the circumstances the witness had any reason or if she's making any explanation [214] for what she signs; I mean all the facts. Objection overruled.

A. We received those checks in January, 1946.

Q. That was substantially about \$78,000, was it not, according to these checks, is that your recollection?

A. Well, I don't recall. It was quite a substantial sum, but I don't remember definitely.

Q. Do you know whether or not you had any independent recollection on May 1, 1946, without some examination of the accounts, as to what the balance was on any specific date or any specific month? A. No.

Mr. Stocking: That's all.

#### Recross-Examination

By Mr. Emigh:

Q. Now, of course when you passed that figure, you saw that figure in there when you signed that, of course? A. I suppose I did.

Q. Well, did you? A. I must have, yes.

Q. Yes, you knew it was there, and you knew that these big sums didn't come in until after January 1, didn't you?

A. I don't think I even thought about it.

Q. You don't think you ever thought about it?

A. Not at the time.

Q. And because you knew about these big sums

(Testimony of Irene Vermillion.)

that had come [215] sometime, that isn't why you signed this statement stating that the balance on January 1 was \$51,077.92?

A. The only reason I signed it was because we were evidently quite late in getting that in, and it was important that it get back to that department in Olympia.

Q. Did you know you were signing a false statement?

A. No, I didn't place—I didn't know anything about it, actually.

Mr. Emigh: That's all.

#### Redirect Examination

By Mr. Stocking:

Q. Well, you read it, that's correct?

A. No, I actually didn't read it.

#### Recross-Examination

By Mr. Emigh:

Q. You just told us you saw that figure; how did you see it if you didn't read it?

A. At a glance.

Q. And you saw it was a cash balance as of December 31, 1945, didn't you?

A. Yes, I did know that.

Mr. Emigh: That's all.

(Whereupon, there being no further questions, the witness was excused.)

## CHARLES E. HORNING

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Erickson: [216]

Q. Will you state your name, please?

A. Charles E. Horning.

Q. And where do you reside, Mr. Horning?

A. Wallace, Idaho.

Q. What is your business?

A. I'm a lawyer.

Q. You're a member of the bar of the state of Idaho? A. Yes, sir.

Q. And how long have you practiced law in Wallace? A. 33 years this month.

Q. 33 years this morning? A. This month.

Q. Well, Mr. Horning, are you engaged in any capacity with the Lucky Friday Mining Company? Not the Lucky Friday Extension, but the Lucky Friday Mining Company?

A. It's the Lucky Friday Silver Lead Mines Company. Yes, I am.

Q. And in what capacity are you employed by the Lucky Friday Silver Lead Mines?

A. I am vice president of the company, and I have been its attorney since its incorporation.

Q. And when was it incorporated?

A. 1939.

Q. And are you acquainted with the Lucky Friday Extension Mining Company? [217]

(Testimony of Charles E. Horning.)

A. Well, I know what it is, yes.

Q. And did the Lucky Friday Silver Lead Mining Company enter into any contract with the Lucky Friday Extension Mining Company?

A. It did.

Q. And where, with reference to the Lucky Friday Mining Company; is the Lucky Friday Extension Mining Company?

A. Immediately to the west and to the northwest.

Q. And I'll ask you if the matter of a contract was discussed between the Lucky Friday Extension Mining Company and the Lucky Friday Silver Lead Mines? A. Was it discussed?

Q. Was it discussed, yes. A. Yes.

Q. And was it discussed with you?

A. Yes, it was.

Q. And by whom representing the Lucky Friday Extension Mining Company?

Mr. Emigh: Just a minute; we object to this as calling for a conclusion of the witness, as to the capacity.

The Court: Overruled.

Mr. Emigh: Invading the province of the jury in the determination of a matter which might become very important in this case, as to authority and so forth. I [218] think the facts should be given, and not the conclusions as to authority.

Mr. Erickson: Well, that's what I was going to ask for, counsel. This is preliminary.

The Court: He was asking who.

(Testimony of Charles E. Horning.)

Mr. Emigh: —represented the corporation; that's the point we object to.

The Court: Well, it will be for the jury to determine in what capacity the person represented the corporation. He may state. Objection overruled.

Mr. Emigh: Exception.

The Court: You may read the question, Mr. Reporter.

(Whereupon, the reporter read the last previous question.)

A. I think I handled all of the discussions on behalf of our own company, and many of my discussions concerning the contract which was finally entered into were with Mr. Allen principally.

Q. And in what capacity did Mr. Allen say that he was acting, in behalf of himself, or in behalf of some corporation?

A. Well, he was the principal negotiator on behalf of the Lucky Friday Extension.

Q. And can you fix the time when this discussion occurred?

A. Do you mean as to an exact date?

Q. Well, as to the approximate date. I know you can't fix [219] the exact date.

A. Matter of fact, the discussions covered a period of a number of weeks, as is usually the case in a contract of that character.

Q. And were there a number of discussions, Mr. Horning? A. Oh, yes.

(Testimony of Charles E. Horning.)

Q. Could you estimate the number of discussions you had with Mr. Allen?

A. That's right, there were two contracts. There was an original contract, and then subsequently, a few months later, a supplemental contract. I can fix the—I'll do the best I can to give you the time of those discussions.

Q. Yes.

A. I can give you the period within which they occurred.

Q. Well, give us the period.

A. I would say from perhaps early in May—

The Court: What year?

A. —1945, up until the date the original contract was signed up, which was June 30, 1945; then it became necessary to have a supplemental agreement between the same two companies. That required some further discussions. That agreement was signed on October 1, 1945.

Q. Well, now, Mr. Horning, did you prepare the contract yourself, or not? A. I did. [220]

Q. And after the contract was prepared state whether or not it was forwarded to Mr. Allen, the defendant in this case, or copies of it?

A. That's correct; they were drawn, they were prepared in what we call the rough, first, not ready for signatures. The rough drafts were submitted to Mr. Allen and Mr. Keane for their approval, then finally the finished product, ready for signature, was likewise submitted to them.

(Testimony of Charles E. Horning.)

Q. Well, after Mr. Allen saw the original contract did he call you on the telephone?

A. Yes.

Q. And what was the substance of that telephone conversation with Mr. Allen?

A. He called me a number of times. I remember one in particular, in which he complimented me on the contract, said it was a masterpiece.

Q. That was the original contract?

A. That's right.

Q. And the supplemental contract, was that forwarded to Mr. Allen?

A. Whether it was forwarded to him or handed to him in Wallace, I couldn't say.

Q. Did he discuss that with you? A. Yes.

Q. And what did he say about that contract, if anything? [221]

A. To answer that question fully and properly I think I should make a little explanation.

Q. Yes.

A. Of the necessity for it. The original contract between the two companies provided for certain development work to be done by our company for the Extension Company, but at their expense, that work to be done on our one thousand foot level. We had our shaft down to that depth at that time. Subsequent to the execution of that contract another company came in, wanted to go in on the development program. They wanted to sink an additional 400 feet. That's why the supplemental

(Testimony of Charles E. Horning.)

agreement, the second agreement, was necessary between our company and the Extension. The Extension Company as I understood it in the meantime had issued their prospectus which didn't call for sinking. Mr. Keane's idea was that they might get in bad with the S. E. C. if they now signed that supplemental agreement and agreed to go to the expense of sinking 400 feet, where they hadn't announced in the prospectus they were going to. Mr. Allen felt that since they were doing more work than the prospectus had said they were going to do, that the S. E. C. couldn't have any objection. Now, does that answer your question?

Q. Yes, that answers the question. Mr. Allen did not sign either of the contracts, did he? [222]

A. That's correct, he did not.

Q. With reference to the time of the formation of the Lucky Friday Extension Company, did any of these discussions about the contract take place prior to that time?

A. Oh, I couldn't say as to that. They took place prior to the location of their claims. Their claims were located some in May, some very early in June, 1945. I would say that the discussions started prior to that time. I don't remember the date their company was incorporated.

Q. How much money did the Lucky Friday Extension Mining Company pay the Lucky Friday Silver Lead Mines for this work?

A. How much?

(Testimony of Charles E. Horning.)

Q. Yes, approximately.

A. Well, I haven't the figures, Mr. Erickson, and I am not the secretary-treasurer of our company, but I think I'm correct in saying that it was in the neighborhood of seventy-five or eighty thousand dollars. There was a great deal of work done.

Q. And the two companies then were to share mutually in the ore that was uncovered?

A. Our company and the Extension, yes, in any ore discovered through this work in their ground to the west and north of us.

Q. Now, with reference to a fishing trip that took place, [223] and which yourself and Mr. Keane went on, on August 7, 1945, did you check up on that fishing trip, from your records?

A. For the date?

Q. Yes. A. Yes; I did.

Q. And did you make the arrangements for that fishing trip?

A. I made the arrangements, invited those who—

Q. Give the details of that.

A. How it came about, and so forth?

Q. Yes.

A. The Hecla Mining Company was to hold a directors' meeting here in Spokane on Monday, August 6, 1945. One of their directors was a gentleman by the name of George Meyer, from Milwaukee, quite an ardent fisherman. I was asked in advance of that meeting if I would arrange for a

(Testimony of Charles E. Horning.)

fishing trip upon which we might take him following their directors' meeting. I did that; I had a friend who owned a very nice little hunting lodge over on the St. Joe River. I wrote to him about July 1, 1945, and spoke for the cabin that far in advance because it was quite in demand, then I arranged for—

Mr. Emigh: Pardon my interruption; I don't think this is responsive to any question, now. It's just a rambling statement of the witness. [224]

The Court: Let's have the question.

(Whereupon, the reporter read the question as follows: "Give the details of that.")

Mr. Emigh: He's back in July, now. He'll be back to Christmas pretty soon.

The Court: Well, the question as put allows a lot of latitude. You didn't object to the question; you're objecting to the answer that the question invited. If he gets back to Christmas I'll interfere.

A. I won't go back that far. I arranged for the cabin and got it for the week beginning August 7, 1945. I checked up on my correspondence with the owner of the cabin, and satisfied myself as to that date. I've checked up down here in Spokane at the Spokesman-Review reference library, I believe they call it, this morning, just to make doubly certain, and I found that the Hecla directors' meeting was held in Spokane on August 6, 1945. I remember very distinctly that we went on that trip the following morning.

(Testimony of Charles E. Horning.)

Q. And how long did Mr. Keane stay?

A. Oh, we were out there three or four days, if I remember correctly.

Q. And do you remember when you went and when Mr. Keane went? A. When?

Q. When; what time of the day?

A. Well, I went in a car that followed the grocery truck. Mr. [225] Keane and Mr. Sekulic arrived at the place very shortly after I did.

Mr. Emigh: We object to this as not being responsive.

A. Early in the morning.

Mr. Emigh: He can state the time. This is not cross-examination.

A. Early in the forenoon.

Q. Did you arrive before Mr. Keane?

A. Before noon, oh, yes.

Q. Did you arrive prior to the time that Keane arrived? A. Perhaps half an hour.

Q. What time did you arrive there?

A. I'd say about the middle of the forenoon. It's a forty mile drive over there on a narrow winding mountain road, so we left Wallace pretty early.

Q. What time did you leave Wallace?

A. Well, you're asking me for a detail now that I can't give you. We left early that forenoon.

Q. I see. It was a forty mile drive over this narrow winding road from Wallace to the cabin?

A. A little better than forty, yes.

(Testimony of Charles E. Horning.)

Mr. Erickson: That's all.

### Cross-Examination

By Mr. Emigh:

Q. It's an automobile road? [226]

A. Oh, cars get over it, yes.

Q. Huh?

A. I say, yes, we use it for an automobile road.

Q. What time of day did you leave?

A. That morning? You're going to have to make me guess. I just said I can't fix the exact hour; I'll do the best I can if you want me to.

Q. How many mining companies were involved in this contract for development?

A. Only—in the development program, or in this particular contract?

Q. Well, the development program you were just talking about.

A. The Lucky Friday Silver Lead Mines Company, that's the one I refer to as our company, the Lucky Friday Extension, and the Hunter Creek Mining Company; three.

Q. Now, the Hunter Creek was the company that Mr. Allen represented, wasn't it, Mr. Horning?

A. Pardon?

Q. The Hunter Creek was the company that Mr. Allen represented? A. No.

Q. Who did you negotiate with in relation to the Hunter Creek?

A. With Mr. Dunlop and Elmer E. Johnston, and their engineers.

(Testimony of Charles E. Horning.)

Q. Isn't it a fact that Mr. Allen was as active in that as he was in the other contract? [227]

A. No.

Q. As far as the negotiations were concerned?

A. No.

Q. Wasn't this a development program that he had conceived for that group of mining claims in there?

A. The Hunter Creek Mining Company, its development was to be in exactly the opposite direction from the Lucky Friday Extension's; no relationship between the two.

Q. No relationship? A. No.

Q. Were you a director in the Lucky Friday Extension? A. Extension? Never.

Q. Ever hold stock in it?

A. A very small amount.

Q. Well, how much?

A. I think I probably have 14,000 shares now. I had a little more at one time, and I sold it, and when I could see the Extension Company going to the bad, I gave the money back and took my stock; that's the way I happened to have a little more.

Q. How much more did you have before you sold?

A. I sold 10,000 shares to each of three of my friends. One of them I gave his money back in full. He gave me the stock back. I still have it. Another one had sold a little of his, and I gave him back the difference. The [228] third one, I offered his

(Testimony of Charles E. Horning.)

money back to him, and he said no, he was full grown when he bought it, and he'd stay with it.

Q. From whom did you purchase those stocks?

A. From whom did I purchase them?

Q. Yes.

A. They came to me out of a block of stock which Mr. Sekulic received in consideration of some ground which he turned in to the Lucky Friday Extension.

Q. That was stock paid for by purchase of property? A. That's right.

Q. That's some of the original stock, is that right?

A. Well, I assume that that's right, yes.

Q. Original issue? A. I think so.

Q. And that property was purchased from Mr. Sekulic, was it not, by the Lucky Friday?

A. You mean by the Lucky Friday Extension?

Q. Extension, yes.

A. Purchased by them? One small patented tract which had been homesteaded by other parties and from whom Mr. Sekulic had acquired it the year before was conveyed to the Lucky Friday Extension. There were four, I think four, other claims lying to the west of our property which Mr. Sekulic had held by location off and on since about [229] 1930. He used to call it the Mullan Mining Company, although it was not incorporated. Mr. Sekulic permitted the Lucky Friday Extension Company to

(Testimony of Charles E. Horning.)  
go on and relocate that ground instead of his doing it himself.

Q. Did you ever talk with Mr. Sekulic about this proposed contract of development?

A. Did I?

Q. Yes.

A. Oh, yes, certainly. He was president of our company; I naturally would.

Q. I didn't get that.

A. He was president of the Lucky Friday Silver Lead Mines.

Q. And you talked with him a good deal before that was executed, that contract, didn't you?

A. I talked with him a great deal, same as I talked with Mr. Allen a great deal; some with Mr. Keane.

Q. Did you ever talk with Mr. Keane?

A. Yes, to some extent.

Q. And you say you talked with Mr. Allen?

A. Oh, yes, yes.

Q. Mr. Allen's part of the thing was to point out the advantages of a development of that kind, wasn't it?

A. Oh, I don't think he did that. We all knew what the advantages were; they didn't have to be discussed. He discussed the terms and conditions of the agreement. It [230] was quite a long agreement. It was going to involve the expenditure of a lot of money. It involved the doing of a lot of work. Those were the things we discussed, to agree

(Testimony of Charles E. Horning.)

on the terms. That wasn't done in a day; it wasn't done in a week. Those contracts never are. I imagine those discussions of the terms and conditions in detail covered a period of a number of weeks. I've had agreements of that kind that covered three months before the parties would get together. That's the sort of thing that was discussed with him.

Q. Now, you knew Mr. Keane very well?

A. Yes.

Q. He was a director in the Lucky Friday, not the Extension, but the Lucky Friday, was he?

A. He was at that time. He's not now.

Q. Judge Featherstone was?

A. That's right.

Q. And you were?

A. That's right, and the other one was W. J. Emacio.

Q. Was Mr. Keane an officer at that time?

A. No, never was.

Q. He was a director, however?

A. He was a director, but he hadn't attended a meeting for four or five years.

Q. Sir? [231]

A. He was a director, but an inactive one.

Q. Well, he took part in the discussion of this contract, didn't he?

A. He did to some extent, yes. He wasn't in condition at that time to take any great part in it.

Q. By the way, you say they gave you the stock. Was that——

(Testimony of Charles E. Horning.)

The Court: Who are you referring to, the individual who was not in a condition?

A. Oh, Mr. Keane.

Q. You said you had some stock in the Lucky Friday Extension which I believe you stated in your testimony they gave you?

A. Mr. Sekulic gave it to me.

Q. Mr. Sekulic did, that's right?

A. That's right. He and I have been associated for years in one thing and another, and—I don't know whether you want me to go into that. He considered that property that he owned out to the west of there partly mine.

Q. Do you know how much of the stock Mr. Sekulic got? A. No, I don't.

Q. Do you know how much stock Mr. Grismer got?

A. I wouldn't have any way of knowing. If I may go back, now, so that—

Mr. Emigh: There's no question before the court now.

A. I mean in further answer to the one you just asked me. [232]

Mr. Emigh: We object to the witness testifying further without a question. He's an attorney.

Mr. Erickson: He states it's a further answer. I suggest he should be permitted to supplement it.

The Court: Well, I'm not too sure Mr. Emigh had any right to ask the question.

(Testimony of Charles E. Horning.)

Mr. Emigh: I'm objecting to Mr. Horning continuing his lecture.

The Court: Since you asked, I'll let him answer. You may answer.

Mr. Emigh: Let's find out what the question was.

The Court: What was the question you'd like to explain?

A. He asked me if I knew how much stock Mr. Sekulic got. Now, I don't want to leave an incomplete answer here.

The Court: Well, does it make any difference in this case?

Mr. Erickson: No.

Mr. Emigh: It might.

The Court: Well, then I'll permit him to answer.

Mr. Emigh: Well, he said he didn't know, I believe, and then went on into this dissertation.

The Court: Well, he may finish his explanation.

Mr. Emigh: Exception.

The Court: Now you may say what you'd like to say. [233]

A. While I would have no way of knowing how much stock he got, again——

Mr. Emigh: Now, just a minute. You answered the question. If you don't know, you don't know.

The Court: All right, sufficient. I'm allowing it to be sufficient because I'm not able to see, counsel, where your question as to the stock in any wise is

(Testimony of Charles E. Horning.)

cross-examination on the matters that were inquired into by the government of this witness. [234]

\* \* \*

### Redirect Examination

By Mr. Erickson:

Q. Mr. Horning, was there anything said by Mr. Allen to you about surveying the property, that you can recall? A. Yes, that they—

Q. What was that?

A. That they were to have it surveyed; by "they" I mean the Lucky Friday Extension crowd, and they did.

Q. Who did Mr. Allen say would do the surveying?

A. My recollection that he told me, he told us, I will say, that Arthur Lakes would do the surveying.

Mr. Erickson: That's all.

### Recross-Examination

By Mr. Emigh:

Q. Is that a clear recollection you have, Mr. Horning, or your best impression? [236]

A. Quite clear.

Q. Quite clear? A. Very clear.

Q. Do you remember the date of that discussion?

A. Of that conversation?

Q. Yes.

A. No. Sometime within that period when the discussions were going on.

Q. Sometime between May and October?

(Testimony of Charles E. Horning.)

A. Oh, no. No. Those claims were, I think two or three of them were located—here, I'll tell you a date; three of their claims were located on May 26, 1945; five of them on June 4, 1945. Now, the discussion of the survey was shortly before that.

Q. Before that?

A. Because the claims were located only after the surveying had been done.

Q. Mr. Horning, you know Mr. Sekulic?

A. Yes.

Q. And Mr. Grismer? A. That's right.

Q. Isn't it true that you and Mr. Sekulic had Mr. Grismer locate some claims out there?

A. You mean in this group?

Q. Huh? [237]

A. In this particular Extension group?

Q. At that time. A. No.

Q. Or near that time? A. No.

Q. To be transferred to the Lucky Friday?

A. No.

Q. That's not true?

A. I don't think Mr. Grismer would know how to locate one, in the first place——

Mr. Emigh: Well, now, we'll object to counsel, who is an eminent lawyer, making speeches after he's answered the questions.

The Court: All right. Anything further?

Mr. Emigh: No, your Honor.

Mr. Erickson: No.

(Whereupon, there being no further questions, the witness was excused.)

The Court: It is 4:30. Now, ladies and gentlemen of the jury, from time to time the court will make certain rulings, and from time to time counsel on one side or the other will make objections. Counsel in this case, the same as in every case, has the right to make objections. As a matter of fact, there's the duty on counsel to make an objection when they feel that their client's interests [238] require it. Some of the objections I will sustain; some of them I will think should be overruled. From time to time the jury may think that I think certain things as to the weight to be given to the testimony of certain witnesses. In the first place, the jury is very apt to be mistaken in thinking what I think. In the second place, even if the jury by coincidence might correctly guess as to what I think, this is to let the jury know that the jury in no wise is bound or controlled by what I think or by what the jury thinks I think as to the weight of the testimony of any witness.

It's the jury that determines how much credibility they should give to the testimony of each and every witness; it's for the jury to determine how much or how little weight they should give to each and every witness respectively. The jury is not bound or controlled at all by what the judge thinks or by what the jury thinks the judge thinks, and in this case from time to time there will be rulings which are necessary for me to make. It

will be your duty to only be guided by and interested in such testimony as the Court permits to be heard, and after you hear that testimony you're the ones who decide how much or how little such testimony impresses you. Good night. See you tomorrow morning at 10 o'clock. Court is adjourned until tomorrow morning at 10 o'clock. The jury [239] remembers the usual admonition.

(Whereupon, at 4:35 o'clock p.m., the Court took a recess in this cause until Wednesday, June 8, 1949, at 10 o'clock a.m.)

(Spokane, Washington, Wednesday, June 8, 1949, 10 o'clock a.m. Third day of trial.)

(All parties present as before, and the trial was resumed.)

### JAMES E. GYDE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. James E. Gyde.

Q. And your business?

A. I'm a lawyer.

Q. Where do you practice law, Mr. Gyde?

A. In Wallace, Idaho.

Q. And directing—well, first, how long have you practiced law in Wallace, Idaho?

A. About twenty years.

(Testimony of James E. Gyde.)

Q. And directing your attention to the Pilot Silver Lead Mines, are you acquainted with the Pilot Silver Lead Mines? A. I am.

Q. And what briefly is your acquaintance and was your acquaintance [240] with the Pilot Silver Lead Mines?

A. Well, I was employed by Mr. Keane, I believe, in the fall of 1945 to do work for the Pilot Silver—legal work for the Pilot Silver Lead Mines.

Q. And what legal work were you to do for the Pilot Silver Lead Mines?

A. I was to check over the articles of incorporation, the by-laws, and look over the titles to the properties, and check the minutes, and see that the records were properly kept.

Q. And did you do any legal work for the state of Idaho, to qualify the company in the State of Idaho?

A. No, I did not do that, but I checked the articles of incorporation after they came back from the state of Idaho.

Q. And what was your compensation, Mr. Gyde?

A. My compensation at the time I was employed by Mr. Keane, you mean?

Q. Yes.

A. Well, no compensation was set at that time.

Q. And when was your compensation set?

A. That was about I would say in the middle of April, 1946.

Q. And who fixed your compensation?

(Testimony of James E. Gyde.)

A. Well, Mr. Keane and Mr. Allen came into my office and told me that they were going to issue me 150,000 shares of the stock of the Pilot Silver Lead Mines, but that I was to [241] have 25,000 shares of stock for my fee; the balance of the stock was to be returned to Mr. Keane, and Mr. Keane was to use this stock to pay off other persons who had helped with the organization of the Pilot Silver.

Q. Did you agree to those terms as laid down by Mr. Keane?

A. I agreed to them. I asked them if that was a proper procedure, and they assured me that it was a proper procedure, and that it was commonly done, and that it was all right, and then I agreed to it.

Q. Was the defendant Allen there during those conversations?

A. Mr. Allen was there during those conversations.

Q. Did you have any other conversations with the defendant Allen about this?

A. Oh, I saw the defendant Allen numerous times; he had an office right across from mine, and general conversations with him, more social conversations than business conversations.

Q. Was that the only conversation that you can recall in regard to the business of the Pilot?

A. That's the only one.

Q. Did you receive any cash payments in addition to your stock?

(Testimony of James E. Gyde.)

A. No. Just a moment; on that last question I don't know whether I just understood what you meant, did I receive any cash payments. [242]

Q. Well, did you or did you not, as compensation in addition to your stock, or did you just receive your stock?

A. Oh, I received compensation for the—my stock was sold, and I received the cash in lieu of it.

Q. Yes, but you did not receive any cash in addition to your stock? A. No.

(Whereupon, two checks to Gyde from Keane were marked Plaintiff's Exhibit No. 30 for identification.)

(Whereupon, check Gibson to Gyde 5/21/46 was marked Plaintiff's Exhibit No. 31 for identification.)

(Whereupon, check Gibson to Gyde 5/23/46 was marked Plaintiff's Exhibit No. 31-a for identification.)

Q. Now, Mr. Gyde, the 25,000 shares of Pilot Silver Lead stock which you received, did you sell that at a subsequent time?

A. I did. I didn't receive—actually, to receive a certificate for 25,000 shares, I did not receive, but I received the cash in lieu of it.

Q. I'll hand you Plaintiff's identification 30, consisting of two checks, and ask you if that represents the compensation?

A. The check on top dated May 22, 1946, is made

(Testimony of James E. Gyde.)

to my order and was paid to me by Mr. F. C. Keane for 10,000 of my [243] 25,000 shares of stock. The check dated May 27 for \$1500.00 was also made by F. C. Keane and was in payment of the balance of my 25,000 shares of stock.

Mr. Erickson: I will offer 30.

Mr. Etter: Your Honor, I'm going to object to the admission of this exhibit at this time as being incompetent, irrelevant and immaterial, and indicating no material factor that brings it within the purview of any of the charges of the indictment as it now refers to the defendant James A. Allen, no proper foundation has been laid to associate the defendant Allen in any way with the checks, upon their face they had nothing to do with the defendant Allen, and there is no connection shown by the witness' testimony at this time to in any way prove any count against the defendant Allen as charged in the indictment.

The Court: Let me see the checks. Ruling reserved as to Exhibit 30.

Mr. Erickson: Has the Court seen the checks?

The Court: I've seen the checks, yes.

Mr. Erickson: Oh, ruling reserved, pardon me.

Q. (By Mr. Erickson): Mr. Gyde, I'll hand you Plaintiff's identification 31-a and ask you to state what that is?

A. The first check here is a check dated May 23, 1946, to James Gyde for \$4500.00, issued by the

(Testimony of James E. Gyde.)

E. J. Gibson and Company, and that check was handed to me by——[244]

Mr. Etter: Just a minute; I'm going to object to any further testimony. The exhibit has been merely identified.

Mr. Erickson: I think he's just describing the exhibit.

Mr. Etter: Well, he's described it already.

The Court: He has described it. If you have another question to ask, you may put it, and if there's an objection I will rule.

Q. (By Mr. Erickson): Did you endorse this exhibit or identification?

A. I did endorse the exhibit.

Q. At the same time—what time did you endorse it with reference to the time it was given to you? A. Oh, within a few minutes thereof.

Q. I will hand you plaintiff's identification 31, and ask you to state what that is?

A. That's a check made to me, James E. Gyde, in the sum of \$10,000, issued by the E. J. Gibson and Company.

Q. After you received that check what did you do with it? A. I endorsed the check.

Q. Did you give it to anyone after you endorsed it?

A. I gave the checks to Mr. Keane, both of them.

Q. At the same time?

A. No, one came different dates, I think you'll notice there. [245]

(Testimony of James E. Gyde.)

Q. Yes.

A. The second check was dated May 21.

Q. Who requested that you give these checks to Mr. Keane?

A. Oh, Mr. Keane. He brought them to my office.

Mr. Erickson: I'll offer 31 and 31-a.

Mr. Etter: I'll object at this time to the admission of these exhibits on the ground that they're incompetent, irrelevant and immaterial, do not show in any way that the defendant Allen is privy to any of the transactions arising as evidenced by the checks, there is no connection between the checks and any count or charge as alleged and laid in the indictment against the defendant Allen.

The Court: Ruling reserved.

Q. (By Mr. Erickson): Mr. Gyde, were the two checks which were endorsed, 31 and 31-a, what were those checks for?

A. Those checks were for the payment of 145,000 shares of the Pilot stock that was issued in my name.

Mr. Erickson: That's all, you may examine.

Mr. Etter: No cross-examination.

(Whereupon, there being no further questions, the witness was excused.)

EMELINE A. PHELAN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(Testimony of Emeline A. Phelan.)

Direct Examination

By Mr. Erickson: [246]

Q. Will you state your name, please?

A. Pardon?

Q. What is your name?

A. Emeline A. Phelan.

Q. And where do you reside, Mrs. Phelan?

A. Osborn, Idaho.

Q. And are you a widow woman?

A. Yes.

Q. And what was your husband's name?

A. George Brewer Phelan.

Q. And he's been deceased for several years?

A. Since '44.

Q. Now, Mrs. Phelan, was your husband the owner of any mining claims in the vicinity of Mullan, Idaho? A. Must have been.

Q. Well, was he, to your knowledge?

A. To my knowledge, yes.

Q. And did you have his estate probated in the probate courts— A. Yes, sir.

Q. —of Idaho? A. Yes, sir.

Q. And was the mining claims set over to you— A. Yes, sir.

Q. —set aside to you as your property after his death— A. Yes, sir. [247]

Q. —in the course of probate proceedings?

A. Yes, sir.

Q. And what were the names of those mining claims?

(Testimony of Emeline A. Phelan.)

A. The Dayton, the Miami, and the Akron.

The Court: What was the last one?

A. Akron.

Q. Well, Mrs. Phelan, were you approached or interviewed by anyone with reference to the formation of a new mining company and the procuring of these claims?

A. Well, naturally I was approached by Mr. Grismer.

Q. You were approached first by Mr. Grismer?

A. Yes, I was.

Q. And did you know Mr. Grismer before?

A. My husband had known him for several years, fifteen, I suppose, and I had known him as to meet him.

Q. When you talked to Mr. Grismer did you talk to anyone after you talked to Mr. Grismer, about these same claims? A. Yes, sir.

Q. Who did you talk to afterwards?

A. He brought a gentleman there and introduced him as Mr. Allen.

Q. Is it the same defendant as the defendant in this case, sitting at this table?

A. Well, since I didn't know Mr. Allen before, and have never seen him since, I couldn't say. He was dressed altogether [248] differently, of course.

Q. Yes, and was Mr. Grismer there when Mr. Allen was there?

A. Yes, sir, he brought him.

Q. And was this at your house?

(Testimony of Emeline A. Phelan.)

A. Yes, sir.

Q. At Osborn, Idaho? A. Yes, sir.

Q. Osborn is just a short distance from Wallace? A. About six miles, I suppose.

Q. And did you have a conversation there with Mr. Allen and Mr. Grismer? A. Yes, sir.

Q. And what was the substance of that conversation?

A. Well, I have a poor memory to begin with, and it was several years ago, but it was simply that they knew of these claims, and was thinking of taking up land or something to that effect in that section, and would I be interested in either selling them or letting them go for stock.

Q. And what did you say to that?

A. Well, naturally, since I knew assessment work was soon coming up, and knowing the difficulties of assessment work, especially for a widow, I said yes.

Q. And what terms were agreed upon then, Mrs. Phelan?

A. They offered me \$600.00 in cash and 20,000 shares of stock.

Q. Did you agree to those terms? [249]

A. I did.

Q. Did you get the \$600.00 later?

A. Yes, sir.

(Whereupon, check Keane to Phelan, 2/13/46, was marked Plaintiff's Exhibit No. 32 for identification.)

(Testimony of Emeline A. Phelan.)

Q. I'll hand you Plaintiff's identification 32—

A. What is it?

Q. This is a check, Plaintiff's identification 32, and I'll ask you if that is the check that you received? A. That's my endorsement.

Q. And does that check refresh your recollection as to what time this was?

A. Well, naturally, since the date's right on it, February 13, 1946.

Q. And was that, to the best of your recollection, when this deal was consummated?

A. I know it was in the spring; that's the only memory I have.

Mr. Erickson: I offer 32.

Mr. Etter: We have no objection.

The Court: Exhibit 32 is offered, no objection, it's admitted.

(Whereupon, Plaintiff's Exhibit No. 32 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Mrs. Phelan, did you later go up to Mr. [250] Allen's office?

A. Yes, sir.

Q. And how many days later was that, or approximately?

A. That I couldn't say, but it would be I suppose three or four.

Q. And where was his office located?

A. It is named the Gyde-Taylor Building, I believe.

(Testimony of Emeline A. Phelan.)

Q. In Wallace, Idaho? A. Yes, sir.

The Court: In the what Taylor Building?

A. I believe it's the Gyde-Taylor Building. I'm not sure of the name of the building, but I believe that's it.

Q. Did you have a conversation, a discussion with Mr. Allen at that time when the deeds were arranged for?

A. Well, not too much of a—I mean not any length of time. I remember I was in a hurry to catch a train home.

Q. And who was present up there when you went in the office, to the best of your recollection?

A. There was Mr. Allen, Mr. Grismer, and I believe the secretary.

Q. Was there anything said by Mr. Allen about a new company, and if so, what was said?

A. I can't remember that.

Q. Well, what was the conversation up there? What was the purpose of your going up to the office? [251] A. To get the stock.

Q. Did you get the stock?

A. Yes, sir, my certificate number 100; it was the first one issued.

Q. It was a stock certificate in the Pilot?

A. Yes, sir.

Q. For how many shares? A. 20,000.

Q. You still have your stock?

A. Yes, sir; I should have brought it, but I didn't. I forgot it.

(Testimony of Emeline A. Phelan.)

Q. Was Mr. Allen present when the stock was given to you in the building?

A. If I remember correctly, yes.

Mr. Erickson: That's all, you may examine.

#### Cross-Examination

By Mr. Etter:

Q. Mrs. Phelan, Mr. Grismer I think you said had known your husband for some time?

A. Yes.

Q. And isn't it true they had been acquainted through the mining business for a great number of years?

A. Yes, sir, but they had not worked together.

Q. That's correct, they had not worked together.

A. They just knew each other as neighbors and people in a small town. [252]

Q. Just as neighbors and local residents, as it were? A. Yes.

Q. But you weren't too well acquainted with Mr. Grismer?

A. No; for instance, not well enough to have ever met the family; I just know Mr. Grismer as he came to see Mr. Phelan.

Q. Your husband was deceased when, Mrs. Phelan? A. August, 1944.

Q. Do you recall, Mrs. Phelan, probably the first time that Mr. Grismer and you might have had a conversation with regard to the claims which you owned?

A. Well, it would be, it seems to me, the day before he and Mr. Allen came.

(Testimony of Emeline A. Phelan.)

Q. I see.

A. It was all close together, I know that.

Q. Mr. Grismer had had some conversations, of course, with your husband about those claims some time before?

A. Well, that could have been, but I wouldn't know that; I didn't know my husband's business.

Q. Did he ever discuss with you the—

A. Seldom. Anyone that's been a mining man's wife knows she doesn't try to keep up with her husband's talk.

Q. Too many of them?

A. Too many, yes.

Q. I'll ask you this: When Mr. Grismer first called on you [253] did he mention anything about any negotiations he'd had with Mr. Phelan prior to Mr. Phelan's death?

A. No, because I don't think he had had any, not in a business way.

Q. That you know of?

A. Not that I know of.

Q. And he came down to you and as you say, talked to you about these four claims that you had?

A. Yes.

Q. They were the Akron, the Cleveland—

A. No, the Dayton and the Miami. There is a claim called the Cleveland, but I believe it overlaps some way; it's not in the notice, I know.

Q. Now, Mr. Grismer had a conversation with you on that date about acquiring these claims from you?      A. Yes, he did.

(Testimony of Emeline A. Phelan.)

Q. And what did he say to you at that time, if you recall?

A. Well, he asked if Mr. Phelan still had those claims, as he understood he had, and I said as far as I knew, because Mr. Phelan had written me to always hold them.

Q. I see, so you told him you assumed they were all right? A. Yes.

Q. And then did he have some discussion with you about acquiring them from you?

A. Yes, and he asked me if I had any idea what they were [254] worth, and I told him no.

Q. Did you have any further conversation on that day with Mr. Grismer?

A. He remarked that he would bring a Mr. Allen, that knew more about those things than he did, and he would talk to me.

Q. And shortly thereafter Mr. Grismer and Mr. Allen came down to see you? A. Yes.

Q. Although I think you said your memory was a little indistinct?

A. Naturally; I don't suppose they'd know me here today if they hadn't seen me in the meantime, too.

Q. Mr. Allen had some conversation with you?

A. Yes.

Q. Were you out in the kitchen when you were talking?

A. No, we were in the living room.

Q. Isn't it true, Mrs. Phelan, and this is of

(Testimony of Emeline A. Phelan.)

course a matter of memory with you, isn't it true Mr. Allen talked with you about a central development program in that particular area in which the Pilot and the Lucky Friday and the Homestake and numerous other groups were located?

A. I remember he remarked it would be a nice piece of ground, all of it together.

Q. And he also said, did he not, Mrs. Phelan, that he was [255] with the Callahan Consolidated in the Gyde-Taylor Building?

A. I can't remember that.

Q. But you do recall that you went up to the office in the Gyde-Taylor Building?

A. Yes, but isn't that Mr. Grismer's office? I don't know.

Q. It was Mr. Grismer's office, wasn't it?

A. Naturally that's where he would be.

Q. Now, do you recall who drew the deed for the transfer of the property? A. No, I don't.

Q. If you recollect, don't you remember that the deed was drawn in Mr. Keane's office in the same building?

A. Well, I know we went across to Mr. Keane's office.

Q. And do you remember that a deed was drawn there? A. Yes, and I signed it there.

Q. And do you recall who it was that drew that deed? A. No, I don't.

Q. You don't recall that? A. No.

Q. You went to Mr. Grismer's office in the Gyde-

(Testimony of Emeline A. Phelan.)

Taylor Building, and I think you said that Mr. Allen was present at that time? A. Yes.

Q. And during the conversation didn't it develop that Mr. Grismer had offered you I think it was originally \$300.00 [256] and 10,000 shares of stock?

A. Yes.

Q. And wasn't it true likewise that you then asked Mr. Allen if he thought that was a fair price, and he said he didn't think so, and if the property was worth anything it was worth double that, it would be worth \$600.00 and 20,000 shares in his opinion?

A. I can't remember Mr. Grismer's exact offer of stock, but I do know when Mr. Allen came he did make this final offer, and it was more than Mr. Grismer offered.

Q. And you likewise asked Mr. Grismer about the matter of title to your claims, didn't you, at that time? A. Yes.

Q. You had some question in your mind, did you not, about the title?

A. No, it wasn't that; it was just at that time they were not probated.

Q. That was right.

A. Mr. Phelan had written a deed, but of course he had made it out in Arizona, where he died.

Q. And do you recall that Mr. Grismer told you at the meeting that he would have Mr. Gyde look into that question?

A. Well, I can't exactly remember, but maybe he did.

(Testimony of Emeline A. Phelan.)

Q. And isn't it true also that Mr. Grismer in your company requested a lady by the name of Irene Vermillion to give [257] you the money and make out the stock to you?

A. I have an idea so, if she was the office girl, if she was his stenographer.

Q. Well, no, I want to ask you if the money and the stock wasn't given to you in Mr. Keane's office? A. The check was, I know.

Q. The check was?

A. But I'm not sure where the stock was handed to me, which office.

Q. It could be right, isn't that so?

A. Yes, it could be, but the check was handed to me in Mr. Keane's office.

Q. And it was made out by the stenographer who happened to be in Mr. Keane's office?

A. I think so, as far as my memory goes, but I can't swear to it.

Q. And as you recall, Mr. Grismer walked over with you and instructed her or requested her to do that? A. Yes.

Mr. Etter: That's all, Mrs. Phelan.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.) [258]

## W. H. HERRICK

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. W. H. Herrick.

Q. And where do you reside, Mr. Herrick?

A. San Francisco, California.

Q. Before you resided in San Francisco, California, where did you reside?

A. Wallace, Idaho.

Q. And how long did you live in Wallace?

A. Oh, about thirty years—no, about forty years.

Q. What was your business in Wallace?

A. Mining, and I was county assessor for thirty-five years.

Q. Did you own some mining claims in the vicinity of Mullan, Idaho?

A. I had about a third interest in the Cincinnati group.

Q. What was the Cincinnati group?

A. What was it?

Q. Yes, just briefly, how many claims?

A. Five claims.

Q. And where were they located?

A. Just north of the Gold Hunter Mining Company, adjacent to the Independence and the Pilot Silver.

Q. Mr. Herrick, were you approached by anyone

(Testimony of W. H. Herrick.)

in connection [259] with the Pilot Silver Lead Mining Company about selling the Cincinnati claims? A. I was.

Q. Who contacted you?

A. Joseph Grismer.

Q. And do you recall about when that was?

A. Oh, somewhere along the latter part of 1945, I think, or early in 1946.

Q. And after you talked to Joe Grismer did you talk to others? A. Yes.

Q. Who did you talk to?

A. James A. Allen.

Q. When did you talk to James A. Allen?

A. Well, when we made the final deal for the property.

Q. And where was that deal made?

A. Made in the office of the Callahan Mining Company in Wallace.

Q. And about—well, just describe the meeting that you had in the office when this deal was discussed, who was present, and what was discussed?

A. Well, Mr. Allen informed me what his proposition was.

Q. What did he say?

A. Well, he said he would give us \$5,000.00 and 100,000 shares of Pilot Silver stock. [260]

Q. Of Pilot Silver stock? A. Yes.

Q. And did he say what company he was organizing?

A. Said they would leave it in the name of the

(Testimony of W. H. Herrick.)

Pilot Silver, and throw our claims in under that name.

Q. Who was present at that conversation?

A. When I went in the office Mrs. Phelan was in there, and I think she had completed her deal with Mr. Allen, and left.

Q. And you and Mr. Allen were there alone then?

A. My recollection; I don't remember anyone else being there.

Q. Did you receive your stock subsequently?

A. Oh, I think it was quite a while later.

(Whereupon, check Keane to Cincinnati Co., 5/1/46, was marked plaintiff's Exhibit No. 33 for identification.)

Q. I'll hand you Plaintiff's identification 33, and ask you what that is?

A. Well, it's either the check that I received from Mr. Keane for the \$5,000.00 for the company—oh, it must be; here's my endorsement on it.

Q. When was this received with reference to your conversation with Mr. Allen in the Callahan office?

A. I can't remember just how soon afterwards it was. It wasn't very long.

Q. Did Mr. Allen make any statements to you at that time [261] about the organization of the company, who was organizing it?

A. Not that I remember.

Mr. Erickson: I offer 33 in evidence.

(Testimony of W. H. Herrick.)

Mr. Etter: We'll object to the admission of this exhibit at this time as being incompetent, irrelevant and immaterial to prove any issue made by this case; it indicates it's a check from F. C. Keane; the last answer of the witness I think indicates the absence of privy with the defendant Allen so far in the testimony. Object to it further as incompetent, irrelevant and immaterial at this time.

The Court: Ruling reserved.

Mr. Erickson: That's all, you may examine.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Herrick, you were a substantial owner, were you not, in what was known as the Cincinnati Mining Company?

A. About a third owner, yes.

Q. And the company owned a group of claims which were lying to the south and the west of the Pilot group, as you later understood the Pilot group to be? A. That is right.

Q. Now, when was the first time that Joe Grismer started to negotiate or discuss with you, Mr. Herrick, the matter of acquiring those claims which you had in the Cincinnati [262] group?

A. Oh, it's rather hard for me to say.

Q. I mean approximately.

A. Well, as I said before, it was either the latter part of '45 or early in '46.

Q. And did you and he have several discussions about the matter?

(Testimony of W. H. Herrick.)

A. Oh, yes, we'd meet on the street and talk about it.

Q. During that time you had no contact with Mr. Allen, isn't that so?

A. Not that I remember at all.

Q. You don't remember talking to him at all at that time?

A. I don't think so, not until after the final agreement.

Q. After the final agreement. Isn't it true, Mr. Herrick, that in March, in 1946, or in and about that time, that there were other people other than Mr. Grismer who were undertaking negotiations with you looking toward the acquisition of your claims? A. That is true.

Q. One man by the name of George Mortimer, isn't that true? A. That's the only one.

Q. And when did you first have any conversations with Mortimer?

A. I think that was in the spring of '46.

Q. The spring of '46; and when Mortimer talked with you he [263] had some purposes likewise, did he not, as to acquiring the interest or the claims that you had in the Cincinnati group?

A. Oh, yes.

Mr. Erickson: To which we object as going beyond the scope of the direct examination.

Mr. Etter: It's preliminary.

The Court: The question put has been answered. Counsel says it's preliminary. You may proceed.

(Testimony of W. H. Herrick.)

Q. (By Mr. Etter): After the discussions that you had looking toward the acquiring of your claims, I think you answered the District Attorney that you went to the Callahan office with Mr. Grismer?

A. With Mr. Grismer?

Q. With him? A. No.

Q. Did he ask you to come there, is that it?

A. Well, somebody, I think probably Joe, I'm not sure, but anyway, I was asked to be there at that time.

Q. That was about what date, approximately, now?

A. Well, it was probably in April of '46.

Q. And didn't they say there, or didn't Joe tell you, or somebody tell you just before you came up there that the Callahan office was about the only office that had a complete map of all the claims that were involved in this [264] particular group? Did anyone say that to you?

A. Oh, I've looked over so many maps up there I wouldn't recall. Wait a minute; I had a number of talks with Joe Grismer and we looked over the maps and discussed the advisability of developing.

Q. That is, were all these preliminary conversations during the latter part of 1945, the early part of 1946? A. That is right.

Q. And while you were likewise discussing the other proposition with this man Mortimer?

A. Yes, that's true.

Q. Now, when you came up to the Callahan office you met Mr. Allen, isn't that correct?

(Testimony of W. H. Herrick.)

A. I did.

Q. Now, did Mr. Allen tell you at that time that he was working on what he called a Central Development Plan; I'll add a little further to that, using the Gold Hunter as the axis of the operation, so-called?

A. That was one of the propositions discussed, yes.

Q. Yes, and isn't it true that Mr. Allen told you at that time that he was negotiating in Chicago with the owners of the Gold Hunter mining property looking toward a central development having its axis in the Gold Hunter property?

A. I won't say just when he said it, but such a conversation took place, yes. [265]

Q. Such a conversation took place?

A. Yes.

Q. And didn't Mr. Allen likewise tell you, Mr. Herrick, during this conversation, possibly not the first one, but as you say, subsequent, that his plan of consolidation on this central development, if he was able to acquire the Gold Hunter, would include the Lucky Friday, the Lucky Friday Extension, the Hunter Creek, the Idaho Silver, the Pilot, the Cincinnati, and maybe the Homestake and one or two others which were all in that section of the plan, in that district of Idaho?

A. They're all adjacent, and all subject to the same development, except some of them were a little bit low without a shaft.

(Testimony of W. H. Herrick.)

Q. That is, through partial development in some and none in others, isn't that true? A. Yes.

Q. And Mr. Allen discussed that, didn't he?

A. Discussed it?

Q. I mean, he told you he was working on such a plan? A. Oh, he did, yes.

Q. And isn't it true it was indicated to you by Mr. Allen or Mr. Grismer, I don't know which one, that if such a development program got under way and Pilot was in the development program and acquired your claims, that it [266] would greatly enhance the value of your claims to have them operated through the central development of all the claims?

A. That's the only way our claims could be developed.

Q. And you were told at that time that that was the proposal being made to you, and Mr. Allen was working on it, and he advised you that would add greatly to the value of your claims, and you believed it?

A. Well, I knew just as much as Mr. Allen did about the claims.

Q. And you agreed with him, isn't that so?

A. Well, as it was the only way to develop these claims, why, naturally.

Q. Now, didn't he at the time when he was talking about the central development program, didn't he explain during one of these conversations a proposed cross-cut which he was going to run through

(Testimony of W. H. Herrick.)

part of the property from the Gold Hunter shaft or tunnel?

A. Well, that was the natural development for the Cincinnati—Pilot Silver.

Q. The Gold Hunter has a long tunnel—

Mr. Erickson: To which we object as not responsive; the witness was asked Allen's conversation; he gives his own conclusions.

The Court: Stricken. [267]

Q. (By Mr. Etter): The Gold Hunter physical set-up at the present time, and at the time you were discussing these claims, isn't there a long tunnel that goes into the Gold Hunter property, through the Gold Hunter property, by which the surrounding country can be worked by cross cuts from the main tunnel?

A. If the surrounding country is higher than that tunnel level, yes.

Q. It was a practical way to develop it, wasn't it, and didn't Mr. Allen explain a proposed cross cut from the shaft or from the Gold Hunter, and in the event that was impractical, explain a proposed cross cut from the Lucky Friday shaft in the event the Gold Hunter couldn't be purchased; wasn't there some discussion about that?

A. I heard that discussed.

Q. And as a matter of fact, all of these things were discussed after you came up to the office with Mr. Grismer?

A. I think they were, pretty nearly all of them were after that.

(Testimony of W. H. Herrick.)

Mr. Erickson: Were after?

A. After, yes.

Q. And they were after the discussions you had had with Mr. Grismer?

A. Well, Mr. Grismer and I had pretty near all the discussions to start with. [268]

Q. Mr. Allen didn't come down and approach you, did he, Mr. Herrick?

A. Not that I recall.

Q. Mr. Grismer took you up to the Callahan?

A. He didn't take me up.

Q. I mean, you went up and there's where you discussed this with Mr. Allen? A. Yes.

Q. Mr. Allen didn't pay you any money?

A. Didn't pay any money?

Q. He didn't pay you any?

A. Mr. Keane paid the money.

Q. Now, as a matter of fact, when you were discussing this matter of the sale of your claims in the office, Mr. Keane was present, wasn't he, numerous times?

A. Well, which time do you mean?

Q. Well, the time that the transaction was finally finished?

A. No, not to my recollection he wasn't. I went to Mr. Keane's office from the Callahan office.

Q. And did you talk with Mr. Keane there?

A. Yes, and he drew up papers.

Q. He drew the papers? A. Yes.

(Testimony of W. H. Herrick.)

Q. And you transferred your property and received a check from Mr. Keane? [269]

A. Well, he drew up the agreement for the stockholders of the Cincinnati Mining Company to sign. I took that agreement and had a stockholders' meeting and we adopted it.

Q. And then you gave it to Mr. Keane?

A. Gave that agreement?

Q. Yes. A. Yes, it was in duplicate.

Q. And you received from him then \$5,000.00, isn't that so? A. Correct.

Mr. Etter: That's all, Mr. Herrick.

#### Redirect Examination

By Mr. Erickson:

Q. Mr. Herrick, were the discussions relative to the Central Development plan after you made your deal, or before?

A. I think it was after, Mr. Erickson. I don't remember, it might have been at the time, but I don't think that Mr. Allen and I discussed the development before the final agreement was signed and the property turned over.

Q. When you went into Mr. Keane's office were any of the details of the agreement discussed with Mr. Keane, or had they all been discussed previously with Mr. Allen?

A. That I can't say. I don't believe that I had to discuss those things with Mr. Keane at all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the [270] witness was excused.)

### LEO G. KRAEMER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Leo G. Kraemer.

Q. And where do you reside?

A. Wallace, Idaho.

Q. What is your position there, Mr. Kraemer?

A. Pro manager of the Idaho First National Bank of Wallace.

Q. And how long have you been with the Idaho First National Bank? A. About twelve years.

Q. As pro manager? A. No.

Q. And how long as pro manager?

A. Oh, I'd say for the last seven or eight years.

Q. What does the title "pro manager" mean?

A. What it is, is that the board of directors of the bank—

Q. Speak up.

A. It's official authorization from the board of directors for me to transact business for the bank.

Q. And who is the manager of that bank?

A. Mr. O. L. Jones.

Q. In response to the subpoena duces tecum you brought with [271] you, did you not, certain records of your bank? A. That's right.

(Testimony of Leo G. Kraemer.)

Q. And these are the records which I'm holding in my hand? A. That's right.

(Whereupon, deposit slip 8/7/45, Delaware Mines, was marked Plaintiff's Exhibit No. 34 for identification.)

(Whereupon, deposit slip 8/7/45, Montana Leasing, was marked Plaintiff's Exhibit No. 35 for identification.)

(Whereupon, deposit slip 5/22/46, F. C. Keane, was marked Plaintiff's Exhibit No. 36 for identification.)

Q. Handing you exhibits 34, 35 and 36 for identification, will you tell me if those are the permanent records of your bank?

A. These are the permanent records of the bank.

Q. And can you identify Plaintiff's Exhibit 34?

A. It's a deposit slip made out to the Delaware Mines Corporation, dated August 7, 1945.

The Court: Deposit slip?

A. Deposit slip.

The Court: Dated what date?

A. August 7, 1945.

Q. And will you identify exhibit 35, please?

A. And this is a deposit slip made out to the Montana Leasing [272] Company, dated August 7, 1945.

Q. And identify 36 for identification, please.

A. A deposit slip made out to F. C. Keane dated May 22, 1946.

(Testimony of Leo G. Kraemer.)

Mr. Stocking: We'll offer these in evidence, please.

Mr. Etter: We'll object to these exhibits, your Honor, that it isn't conceivable that there is any connection between the exhibits and the defendant Allen, don't indicate there's anything privy between the exhibits and the defendant Allen, incompetent, irrelevant and immaterial at this time, there's no proper foundation laid between these exhibits and the allegations of the indictment pertaining to the defendant Allen.

The Court: Let me see them. Well, counsel, I can see no materiality in these now.

Mr. Stocking: We'll have to connect them up, of course.

The Court: Well, then, I'll reject them. If they need to be connected up they shouldn't be offered.

Mr. Stocking: Well, the materiality of these is as to the dates, and checks were written on those dates to those particular companies.

The Court: Well, at the present time I know of no reason they should be admitted, and exhibits 34, 35 and 36 will be rejected upon the defendant's objection. [273]

(Whereupon, deposit slip 5/22/46, Pilot Company, was marked Plaintiff's Exhibit No. 37 for identification.)

(Whereupon, deposit slip 5/22/46, Coeur d'Alene Consolidated, was marked Plaintiff's Exhibit No. 38 for identification.)

(Testimony of Leo G. Kraemer.)

Q. I've taken from your file number 2 two exhibits which I have had marked plaintiff's 37 and 38 for identification. Are those the permanent records of your bank? A. They are.

Q. And can you identify Plaintiff's 37?

A. A deposit slip made out to the Pilot Silver Lead Company dated May 22, 1946.

Q. And 38, can you identify that for me, please?

A. It's a deposit slip made to the Coeur d'Alene Consolidated Lead and Silver Mines, Inc., dated May 22, 1946.

Q. Now, I will show you what has been marked Plaintiff's 13 for identification, and Plaintiff's 31, which has been received in evidence, and ask you if those two exhibits—

The Court: Let's see, exhibit 13 for identification—

Mr. Stocking: And Exhibit 31, which has been received in evidence.

The Court: Exhibit 31 has been admitted?

Mr. Stocking: Yes.

The Court: All right.

Q. And ask you—[274]

The Clerk: Aren't you mistaken about that, Mr. Stocking? 32 has been admitted, but not 31.

Mr. Stocking: Well, correct that, then.

The Clerk: 31 is for identification.

Mr. Etter: And is 13 likewise an identification, too?

Mr. Stocking: Yes.

(Testimony of Leo G. Kraemer.)

Q. (By Mr. Stocking): —and ask you if you can identify those two exhibits in connection with any transactions with your bank?

A. Do you want them separately?

Q. Yes.

A. Exhibit 13 looks like it was cleared through the Idaho First National Bank on May 22, 1946, and shows our endorsement stamp, and Exhibit 31 cleared through our bank on May 22, 1946, and our endorsement stamp is on the back of the check.

Q. Now, with relation to these exhibits—

The Court: Counsel, it's now 11 o'clock. Is there any reason why we shouldn't have our morning recess?

Mr. Stocking: No reason at all.

The Court: All right, there will be a recess for ten minutes.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.) [275]

The Court: Gentlemen, I am conscious of the fact that a great many exhibits have been offered. A few have been admitted. I might say a very few have been admitted. A large number of them have been made subject to reservation of ruling. A few have been rejected upon the state of the record when offered, but among those concerning which there has been a reservation of ruling are what I imagine would be a number of hundred exhibits.

(Testimony of Leo G. Kraemer.)

I've forgotten the identification of one container which had exhibits A to O therein—

The Clerk: That's identification 8.

The Court: —but undoubtedly many hundred exhibits. Theoretically it would appear that only 40 exhibits have been offered, but I imagine that in those 40 there are several thousand. Ordinarily I hesitate very much about admitting exhibits that I don't know what they show. You can recognize the great difficulty of my knowing what each of these separate sheets show which have been lumped together as exhibit 8, for instance. Now, if I haven't time to know what these exhibits show, how much help are they going to be to the jury?

Mr. Stocking: It's our position, if the Court please, that we need these as foundation evidence for our accountants' summaries to be presented.

The Court: I don't know whether you do or not. If [276] somebody says he went through the records of a company and he found such and such, why do you have to put all the records in? Suppose he said he read the Encyclopedia Britannica; does he have to put the encyclopedia in evidence?

Mr. Stocking: No, but in order to trace down your stock certificates and show who got the benefit of certain stock issued as promotion stock, it's going to be necessary to have the stock stubs, the cancelled certificates, testimony from the brokers—

The Court: I'm not so much concerned about the stock; I recognize there's some possibility of some

(Testimony of Leo G. Kraemer.)

certificates having some relationship to the issue. I suspect that a great many of those certificates are just chaff.

Mr. Stocking: Well, we intended to sort out the ones that were specifically needed, and have those separated from the rest of the corporation records.

The Court: Are the certificates bound together in one exhibit?

Mr. Stocking: Mr. Denney is doing that now with the Extension exhibits. They have been marked for identification, yes.

The Court: What number?

Mr. Stocking: 29. [277]

The Court: Well, rather than confront me with exhibit 29 and offer it in evidence, why should they not be separated and you offer the exhibits—

Mr. Stocking: I don't believe I offered that exhibit, if the court please; I had it identified.

The Court: Well, why identify an exhibit?

Mr. Stocking: Well, those are the corporation records.

The Court: But certainly as to Exhibit 8 a large share of those checks have no casual connection with this transaction except from the standpoint of addition.

Mr. Stocking: After your statement yesterday Mr. Erickson and I conferred, and I think our position on Exhibit 8 is in accord with your position.

The Court: I'm not saying that if the defendant wants the exhibits in, all of them, that the Court

(Testimony of Leo G. Kraemer.)

would refuse, but it's my general theory that if you throw so many papers at me that I can't understand what they are, that at least some of the twelve jurors might not understand any better than I do, so you know what I'm thinking, and that is, so far as you can, streamline your identification of exhibits to something that I can understand.

Mr. Stocking: I think outside of the brokers' records that most of the exhibits will have been identified after the next two witnesses, two or three witnesses. [278]

The Court: All right, gentlemen. Thank you.

(Short recess.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Kraemer, with relation to these exhibits 31 and 13 which you have identified as having cleared through your bank on May 22, 1946, what can you say as to any transaction which took place at your bank on that day?

A. It seems exhibit 13, which is the \$40,000 check payable to the Pilot Silver—

The Court: What check is that?

A. Exhibit 13.

The Court: Identification.

(Testimony of Leo G. Kraemer.)

A. —to the Pilot Silver Lead Company for \$40,000, was deposited to the Pilot Silver Lead Company on Exhibit 37 here.

Q. Was the entire amount deposited?

A. No; \$20,000 of it was deposited to Coeur d'Alene Consolidated Lead Mines; and of the \$10,000 check which is number 31, payable to James E. Gyde and endorsed by him, was deposited by the deposit slip, \$10,000, to F. C. Keane—

Q. On what exhibit?

A. On exhibit 36, and \$5,000 of which went with the \$20,000 [279] to make up a \$25,000 deposit to the Coeur d'Alene Consolidated Lead Mines, Inc., Exhibit number 38.

The Court: \$5,000 went to Coeur d'Alene to make up what exhibit?

A. Number 38.

The Court: All right.

(Whereupon, escrow agreement and cashier's check, 5/23/46, were marked Plaintiff's Exhibit No. 39 for identification.)

Q. I have taken from your file number 4 an exhibit consisting of two documents attached together which has been marked for identification Plaintiff's exhibit number 39, and I will ask you if you can identify that, please?

A. This is an escrow agreement between the Coeur d'Alene Mines Corporation and the Coeur d'Alene Consolidated Silver Lead Mines, Inc.

(Testimony of Leo G. Kraemer.)

The Court: Between the Coeur d'Alene Silver Mines?

A. No, between the Coeur d'Alene Mines Corporation—

The Court: And what was the other?

A. —and the Coeur d'Alene Consolidated Silver Lead Mines, Inc.

Q. And can you identify the signature of the president of the Coeur d'Alene Consolidated Silver Lead Mines, Inc.?

A. The signature is J. A. Allen.

Q. And there is also with this agreement a check which is attached that you have not yet identified.

A. It's a cashier's check dated May 23, 1946, for \$25,000 payable to the Coeur d'Alene Mines Corporation.

Q. Now, with respect to exhibits 37, 38 and 36 for identification, in whose handwriting do they appear?

A. They're my handwriting.

Q. And did you make the notation which appears on exhibit 38?

A. Yes, that's my handwriting too.

Q. And that is the Coeur d'Alene Consolidated deposit slip? A. That's right.

Q. And does that notation make reference to this cashier's check and agreement? A. Yes.

Q. With whom was your transaction on May 22 or May 23, whenever these transactions took place at the bank? A. Mr. Keane.

(Testimony of Leo G. Kraemer.)

Q. And did he bring in these two checks, exhibit 13 and exhibit 31, totalling \$50,000? A. Yes.

Q. And the deposit ended with \$20,000 in Pilot Silver Lead, \$25,000 in the Coeur d'Alene Consolidated for the purchase of the cashier's check, and \$5,000 in Mr. Keane's personal account, is that correct? A. That's correct.

Q. I'll withhold the offer, then, of those exhibits at the present time. Now, I have taken from your bank file number [281] 6 a document which will be marked for identification Plaintiff's exhibit number 40.

(Whereupon, bank ledger of Delaware Mines Corporation was marked Plaintiff's Exhibit No. 40 for identification.)

Q. I'll ask you if you can identify that?

A. This is an original ledger sheet of the Delaware Mines Corporation.

Q. And what does the ledger sheet show as to who has authority to sign checks on that?

A. J. A. Allen or F. C. Keane or William Mullen.

Q. Now, referring to an item on this bank ledger sheet of August 7, 1945, and also referring to Plaintiff's Exhibit 6-a, which has been received in evidence, it being a \$10,000 check payable to Delaware Mines Corporation dated August 7, 1945, check number 8 of Lucky Friday Extension Mining Company, can you identify the deposit of that check on the bank ledger?

(Testimony of Leo G. Kraemer.)

A. Yes. The bank ledger shows a deposit of August 7 of \$10,000, and this check shows it cleared our bank on August 7.

Q. And there was no other item on that day of that amount? A. Not that amount.

The Court: What date was this deposited?

A. August 7, 1945. [282]

Q. What does the bank balance show previous to this deposit? A. \$20.83.

Q. As of what date?

A. As of June 23, 1945.

Q. And the next transaction was—

The Court: How much, twenty dollars?

A. \$20.83.

Q. And the next transaction was the deposit of this \$10,000 check on August 7, 1945?

A. That's right.

Q. And then checks in what amount are shown as drawn on that account on that date?

A. It shows one check for \$3,000.

Q. And how about the date following?

A. On August 8 it shows two checks, one for \$6,000 and one for \$1,000.

Q. And then what does the bank balance show at the end of those transactions, and on what date?

A. On August 8, 1945, it shows \$20.83.

Q. So that the same amount appears there immediately after the \$10,000 deposit, after one day's transactions? A. That's right.

(Testimony of Leo G. Kraemer.)

(Whereupon, Delaware check 8/7/45 was marked Plaintiff's Exhibit No. 41 for identification.)

(Whereupon, Delaware check 8/7/45 [283] was marked Plaintiff's Exhibit 41-a for identification.)

(Whereupon, Delaware check 8/7/45 was marked Plaintiff's Exhibit 41-b for identification.)

Q. Will you examine those exhibits, please, and identify them with reference to any transactions with your bank?

A. I have three checks here, one for \$3,000, one for \$6,000, one for \$1,000, drawn by the Delaware Mines Corporation, that show our bank cancellation of August 7 on the \$3,000, August 8, 1945, on the \$6,000 and \$1,000.

Q. And the \$3,000 is exhibit 41-b, the \$6,000 is marked Exhibit 41-a, and the \$1,000 marked Exhibit 41, all for identification, is that correct?

A. That's right.

Q. Now, can you identify these as being the \$3,000, \$6,000 and \$1,000 items appearing on the Delaware Mines Company ledger, Plaintiff's Exhibit 40?

A. Yes, they all bear the same cancellation mark, paid cancellation mark, as shown by the actual ledger sheet.

Mr. Stocking: We'll reserve our offer of these exhibits at the present time.

(Testimony of Leo G. Kraemer.)

(Whereupon, bank signature card, Delaware Mines Corp., was marked Plaintiff's Exhibit No. 42 for identification.)

(Whereupon, bank signature card, Lexington, was marked Plaintiff's Exhibit No. 43 for identification.) [284]

Q. I hand you Plaintiff's exhibit 42 for identification, and ask you if you can identify that as an original record of the bank?

A. This is the authorized signature of the corporation, the Delaware Mines Corporation.

Q. And whose signatures appear on that, if you know?

A. J. A. Allen, F. C. Keane, and William Mullen.

Q. I hand you exhibit 43 for identification, and ask you if that's an original record of the bank?

A. This is the original authorized signature of the corporation, of the Lexington Silver Lead Mines, Inc.

Q. Whose signatures appear there?

A. J. A. Allen, F. C. Keane, and Irene Vermillion.

Mr. Stocking: We'll offer Exhibits 42 and 43 in evidence at this time.

Mr. Etter: May we ask a question or two on voir dire?

The Court: Surely.

(Testimony of Leo G. Kraemer.)

Voir Dire Examination

By Mr. Etter:

Q. Mr. Kraemer, handing you Plaintiff's for identification 43, I note a stamp there. Can you tell me what that stamp indicates as to that date?

A. No, I couldn't tell you. I don't remember whether it came in my window or not; I wouldn't know.

Q. Well, what would that stamp mean? What does that date [285] mean, stamped on there? How does it get there ordinarily, in the course of your banking practice?

A. I wouldn't know. There's no place for a date on the card.

Q. No place for a date on the card?

A. No, unless it was dated as filed by the girl, or put away; I don't know.

Q. Filed by the girl or put away; what do you mean, filed or put away?

A. Well, we have files where we keep signature cards, and they're kept up to date, and I don't know whether they stamp them or not.

Q. Isn't it entirely possible this card was never filed for record or use until April 18, 1948?

A. I don't know.

Q. Where did you get this card?

A. Took it out of the signature file.

Q. You don't know when it got in the signature file? A. No, I don't know.

Q. Do you know whether it was in the file in the year 1946? A. I wouldn't know.

(Testimony of Leo G. Kraemer.)

Q. Or the year 1947?

A. I wouldn't know. I have nothing to do with the records of the signature cards.

Q. And you merely brought it down here; who filed it in that file? [286]

A. It's the authorized signature card of the corporation; it probably was in there, if we knew the corporation was organized.

Q. But you don't know what this April 18, 1848, is? . . . A. I don't know what that is.

Q. Mr. Kraemer, have you ever seen a stamped date April 18, 1948, or any other stamped date with that type of imprint on a deposit card before?

Mr. Stocking: Just a moment; I think that's April 19, 1946. Is that the one you're referring to? It's not 1948. It looks more like a 6 to me.

Q. It looks like an 8, but have you seen a stamp like that before?

A. Each teller's window has a date stamp; probably every employee in the bank has a date stamp.

#### Direct Examination

(Continued)

By Mr. Stocking:

Q. Can you tell whether that's a 6 or 8?

A. It looks like a 6 to me; I wouldn't swear whether it's a 6 or an 8.

Q. Do you recall whether there was a change in the name of the Montana Leasing Company account to Lexington Silver Mines, and then Lexington Silver Lead Mines, Inc.?      A. That's right.

(Testimony of Leo G. Kraemer.)

Q. Sometime during the first part of 1946?

A. I don't remember the exact date, no. [287]

Q. Do you have your ledger sheets here?

A. The ledger sheet is there. You can tell by it. The Lexington was opened, here's the first date of the Lexington.

Q. What was the first date of the Lexington?

A. The Lexington account was opened on January 16, 1946.

Q. And that was opened under the account of what? A. Lexington Silver Mines, Inc.

Q. You're now referring to the original ledger sheet of the bank? A. That's right.

Q. And what authorization does it show on the ledger sheet?

The Court: What date was that?

Q. January 16, 1946.

A. It shows the authorization of J. A. Allen, F. C. Keane, or Irene Vermillion.

Q. Now, later, was that same account carried in the name of Lexington Silver Lead Mines?

A. That's right.

The Court: What was this name on January 16, 1946?

A. The Lexington Silver Mines, Inc.

Mr. Stocking: I had offered those.

Mr. Etter: What appear to be signature cards, as to these exhibits, Plaintiff's 42 and 43, the defendant objects at this time; from the state of the record so far [288] the exhibits are incompetent,

(Testimony of Leo G. Kraemer.)

irrelevant and immaterial to prove any issue made thus far in this case, not connected up at least so far as the defendant is concerned with any count in the indictment, a relationship isn't shown with any privity at all by reason of these cards with any crime charged in the indictment; incompetent, irrelevant and immaterial.

The Court: Let me see them. Perhaps I ought to see those three checks too. Ruling reserved as to exhibits 42 and 43 for identification.

(Whereupon, deposit slip, Callahan Consolidated, 8/7/45, was marked Plaintiff's Exhibit No. 44 for identification.)

Q. (By Mr. Stocking): I hand you plaintiff's exhibit 44 for identification, and ask if you can identify that? A. Just the name on it.

Q. Yes, can you tell what that is?

A. That's a duplicate deposit slip, the First National Bank of Wallace, Wallace, Idaho.

Q. Does that bear the stamp of the bank as a duplicate?

A. Yes, it shows duplicate, First National Bank of Wallace, George M. Zeller, cashier.

Q. That's for the Callahan Consolidated Mines?

A. Yes; it's dated August 7, 1945.

Q. Now, referring to Exhibit 41-a—by the way, whose signature [289] appears on the exhibits, 41, 41-a and 41-b, the Delaware Mines Corporation checks?

(Testimony of Leo G. Kraemer.)

A. J. A. Allen and F. C. Keane on all three of them.

Q. Referring to Exhibit 41-a, can you identify that in connection with this Exhibit 44?

A. It's a check for \$6,000 payable to the Callahan Consolidated Mines, and it bears the First National Bank of Wallace clearing stamp of August 8, 1945, the date of the deposit, and—the date of the deposit was August 7, and the clearing stamp, it cleared out of the First National Bank August 8, and was paid by our bank on August 8, 1945.

Mr. Stocking: I think that's all.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Kraemer, did you say there was a deposit slip to the credit of the Coeur d'Alene Consolidated Silver Lead Mines Inc., there? At the time as indicated by this deposit slip was there an account current at your bank, the Idaho First National Bank, of the Coeur d'Alene Consolidated Silver Lead Mines, Inc.?

A. I couldn't tell you without looking at the ledger sheets. They're right here, if you want me to look.

Q. Would it take you very long?

A. No, I don't think so.

Q. That would be as of that date, May 22, 1946.

The Court: May 22, 1946? [290]

Q. Yes, your Honor.

A. Maybe I haven't got those here; I don't

(Testimony of Leo G. Kraemer.)

know. I haven't the ledger sheet here, but it seems to me it was just an in and out proposition; there was no account at the time at our bank.

Mr. Stocking: Yes, you have that, I think it was in this other, I'm pretty sure.

A. Here's the only ledger sheet of the Coeur d'Alene Consolidated Lead Silver Mines; it shows the \$25,000.

Mr. Stocking: Speak up.

The Court: You're talking to the jury, not to Mr. Etter.

A. Here's a Coeur d'Alene Consolidated Lead and Silver Mines, Inc., ledger sheet; it shows one deposit and one withdrawal, sheet number 1.

Q. And that is indicated by this slip; there was no account other than the deposit and the withdrawal, in other words, the making of that check?

A. That's right.

Q. Was there anything on file in your bank at that time authorizing the listing or making of an account by the Coeur d'Alene Consolidated Silver Lead Mines, with your bank?

A. On Exhibit number 38, the deposit slip for \$25,000 to Coeur d'Alene Consolidated Lead and Silver Mines, at this [291] time was the opening of the account, and it said that no withdrawals, it was subject to the escrow between this company and the Coeur d'Alene Mines, as shown by this escrow agreement.

Q. I see; well, there were no names on file, then?

(Testimony of Leo G. Kraemer.)

A. There were no names. In other words, it was connected with the escrow agreement.

Mr. Etter: That's all.

#### Redirect Examination

By Mr. Stocking:

Q. It was opened, then, just for the purpose of obtaining this cashier's check for \$25,000 payable to Coeur d'Alene Mines Corporation, which is attached to the agreement marked Exhibit 39 for identification? A. That's right.

Q. It bears Mr. Allen's signature?

A. That's right.

Mr. Stocking: That's all.

The Court: You say the escrow bears Mr. Allen's signature?

Q. Yes. A. Yes.

(Whereupon, there being no further questions, the witness was excused.)

#### BEATRICE McLEAN FRENCH

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [292]

#### Direct Examination

By Mr. Stocking:

Q. State your name, please.

A. Beatrice McLean French.

Q. And Beatrice McLean was your maiden name? A. That's right.

Q. And you were married when, Mrs. French?

A. December, 1947.

(Testimony of Beatrice McLean French.)

Q. Are you acquainted with the defendant James A. Allen? A. Yes.

Q. How long have you known Mr. Allen?

A. Oh, about seven years.

Q. Where do you reside, Mrs. French?

A. In Wallace, Idaho.

Q. And how long have you resided in Wallace or the vicinity of Wallace? A. All my life.

Q. What is your present employment?

A. I'm secretary for the Callahan Consolidated.

Q. The Callahan Consolidated Mining Company?

A. Mines, Inc.

Q. Mines, Inc.? A. Yes.

Q. And your employer then is Mr. Donald Callahan?

A. Yes, he's president of the company.

Q. How long have you been employed by that company? [293]

A. Since January 19, 1942.

Q. Are you acquainted with the Pilot Silver Lead Mines, Inc.? A. Yes.

Q. And were you ever employed by that corporation? A. Yes.

Q. When were you so employed?

A. It was at the time the original issue was put out.

Q. And that was beginning about May, 1946?

A. I can't remember whether it's May or June; it was in the early part of 1946.

(Testimony of Beatrice McLean French.)

Q. Who employed you to assist in getting out this original issue? A. Mr. Allen.

Q. Mr. Allen. Do you recall the circumstances, and what was said?

A. Well, as I remember it, Mr. Allen called me and asked me if I would help Mrs. Vermillion issue the original stock.

Q. And were there any arrangements made at that time or anything said about compensation?

A. There was to be \$150.00 a month paid, and we were to divide it \$75.00 each.

Q. That was between you and Mrs. Vermillion?

A. Mrs. Vermillion.

Q. I hand you what has been marked for identification Exhibits 41, 41-a and 41-b, and ask you if you can identify those [294] three exhibits, please?

A. Well, they are Delaware Mines Corporation checks.

Q. And did you ever have any of the records of the Delaware Mines Corporation in your office or under your control?

A. I don't understand that question.

Q. Well, I mean did you ever have any of these checks in your possession, these Delaware Mines Corporation checks? A. Yes.

Q. And did you have any of these checks in your possession during the month of August, 1945, to the best of your recollection?

A. Well, I probably did.

(Testimony of Beatrice McLean French.)

Q. What was the practice at that time in connection with leaving Delaware Mines Corporation checks with you?

A. Well, I had signed checks most of the time.

Q. And they were signed by who?

A. By Mr. Keane or Mr. Allen, and as I remember it, sometimes by William Mullen, Sr., who is deceased.

Q. And he died early in 1945, did he not, prior to this date?

A. I don't recall the date of his death.

Q. And what was the practice, did you have a regular check book with the checks still intact in the book, or were you given separate checks with signatures on them?

A. I was given separate checks.

Q. And they would contain these signatures and be blank checks? [295] A. That's right.

Q. And who gave you those signed checks?

A. Well, either Mr. Keane or Mr. Allen.

Q. And from time to time you would prepare checks for them? A. That's right.

Q. I'll hand you plaintiff's exhibit 34—I'll hand you plaintiff's exhibits 6-a and 6-b, and in connection with those—

The Court: Are you handing 34, or not?

Q. Yes, together with plaintiff's exhibit 34, and ask you if you can identify plaintiff's exhibit 34 in connection with plaintiff's exhibit 6-a?

A. That's these two?

(Testimony of Beatrice McLean French.)

Q. Just a moment; with plaintiff's exhibit 6-b, excuse me. Yes. No, that isn't right either. May I strike that question and begin over again?

The Court: You may.

Q. I'll hand you plaintiff's exhibit 35, and ask you if you can identify that exhibit in connection with plaintiff's exhibit 41-b, both of these exhibits being for identification?

A. I don't understand that question either.

Q. Can you identify exhibit 35 in connection with this exhibit 41-b? Have you ever seen exhibit 35 before? A. That's this? [296]

Q. Yes. A. Yes, I have.

Q. And you can identify it? A. Yes.

Q. You say you can? A. I can, yes.

Q. And what is it, please?

A. It's a deposit slip for the Montana Leasing Company.

Q. Of what date? A. August 5, 1945.

Q. And in whose handwriting?

A. It looks like my handwriting.

Q. And now can you identify that deposit slip in connection with Plaintiff's exhibit 41-b, which is a \$3,000 check to Montana Leasing Company from Delaware Mines Corporation?

A. The date is the same, the name of the company is the same, and the amount is the same. Does that answer your question?

Q. And what did you write on your deposit slip of that date, what notation did you make?

(Testimony of Beatrice McLean French.)

A. Delaware Mines, \$3,000.

Q. So that the date on both are the same, the payee is the same as the person to whom the deposit slip was made out in favor of, and the name of the check, Delaware Mines, is identical with the Delaware Mines Corporation check, and the amount is identical, is that correct? [297]

A. That's correct.

Q. And was that check then deposited—was 41-b deposited by you in the Montana Leasing Company account with that deposit slip?

A. I have no recollection of making the deposit.

Q. You have no independent recollection?

A. That's right.

Q. Now, showing you Plaintiff's exhibit 34, I'll ask if you can identify that exhibit?

A. This?

Q. Yes.

A. It's a deposit slip to the Delaware Mines Corporation dated August 7, 1945.

Q. And in whose handwriting is that deposit slip? A. It looks like my handwriting.

Q. And what is the notation that you made on there?

A. "Lucky Friday Ext. Mining Company, \$10,000."

Q. Now, referring to—

The Court: How much?

A. \$10,000.

The Court: Just a moment. This witness has

(Testimony of Beatrice McLean French.)  
been on the stand a fair time, and my idea is that there's some of the jurors that could have missed some things that she said. Now, anytime she talks and the jury doesn't hear she might as well have stayed home. Counsel have the [298] obligation of seeing that the jury hears a witness easily. I shouldn't have the obligation.

Mr. Stocking: Yes, I'm sorry.

The Court: How much of this witness has been heard by the jury? Have you heard it all?

Alternate Juror Schulein: It's rather hard.

A. (Witness): I'll try to speak up. I have a very sore throat.

Mr. Stocking: Well, do the best you can, Mrs. French.

\* \* \*

(Noon recess.)

Spokane, Washington

Wednesday, June 8, 1949, 1:30 o'clock p.m. [299]

(All parties present as before, and the trial was resumed.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. I was referring to Exhibit 34, which you stated was a deposit slip written in your handwriting, Delaware Mining Corporation, August 7, 1945; and now, referring to Plaintiff's Exhibit 6-a which has been admitted in evidence, a \$10,000

(Testimony of Beatrice McLean French.)

check by Lucky Friday Extension Mining Company to Delaware Mines Corporation signed by Irene Vermillion dated August 7, 1945, what have you to say as to the connection between Exhibit 6-a and 34? Is that the check that's referred to?

A. Yes.

Q. That was deposited for the Delaware Mines Corporation account? A. Yes.

The Court: By exhibit 34?

Q. Exhibit 6-a, the check, was deposited with Exhibit 34, the bank deposit slip; and now referring to Plaintiff's proposed exhibit number 44, can you identify that, please?

A. It is a duplicate deposit slip, the Callahan Consolidated Mines, Inc., dated August 7, 1945, a Delaware Mines check, \$6,000.

Q. And who prepared that slip?

A. That is my handwriting. [300]

Q. Now, with reference to the Delaware Mines Corporation check of August 7, 1945, which has been identified as Exhibit 41-a, can you state whether or not that is a check which was deposited with that slip on that day by you?

A. I don't know that it was deposited by me.

Q. Well, you prepared the deposit slip?

A. It looks like it.

Q. This looks like the check? A. Yes.

Q. What is that notation on the bottom of it?  
Is that "Credit Delaware loan"? A. Yes.

Q. And you made that notation also?

A. Yes.

(Testimony of Beatrice McLean French.)

Q. Now, in that connection, were you familiar with a transaction in which a loan had been made by Callahan Consolidated to the Delaware Mines Corporation?

A. I don't understand that question.

Q. Well, were you acquainted with that transaction whereby a loan had previously been made? You had credited this Delaware loan; what did you refer to?

A. Well, it stood on the books as an account receivable, I imagine.

Q. And there had been a loan made by Callahan to Delaware, is that correct? [301]

A. Well, that was a common practice.

Q. You mean from time to time loans would be made by Callahan to Delaware?

A. By Callahan Consolidated.

Q. That's right, Callahan Consolidated.

(Whereupon, check to Delaware from Callahan, 6/16/45, was marked Plaintiff's Exhibit No. 45 for identification.)

Q. Now, in that connection, I'll hand you what has been marked Plaintiff's 45 for identification, and ask you if you can identify those records?

A. A Callahan Consolidated voucher check dated June 16, 1945, made payable to the Delaware Mines Corporation in the amount of \$6,000, and it's signed by D. A. Callahan and Beatrice McLean.

Q. And Beatrice McLean was yourself?

(Testimony of Beatrice McLean French.)

A. That's right.

Q. And together with that, what is the second sheet of this exhibit?

A. That's a voucher copy of the same check number 3305, dated June 16, 1945, payable to the Delaware Mines Corporation in the amount of \$6,000. It's been checked and entered by B.M.; that's me.

Q. That was checked and entered on the books by you at the time the loan was made and the check was written? [302]

A. Entered on voucher register, page 15, loan to be repaid July 15, 1945, \$6,000.

Q. Now, can you state whether or not this \$6,000 check, Exhibit 41-a, was the check which repaid this particular loan? You checked your records, did you?

A. Yes, I checked my records, and thatrepays the loan of \$6,000.

Q. Were you in the office when that particular loan was made by a representative of Delaware Mines?

A. You mean I was present in the office at the time?

Q. Yes; you wrote the check.

A. Well, I did write the check, on instructions from Mr. Callahan. I wouldn't be present when the—

Q. You weren't present when the loan was negotiated? A. No.

(Testimony of Beatrice McLean French.)

Q. Do you know who negotiated that particular loan? A. No.

Q. You said it was a common practice for these loans to be made from Callahan Consolidated to Delaware, and have you ever been present when any of these loans have been negotiated?

A. Not to the best of my recollection.

Q. You don't know whether Mr. Keane or Mr. Allen negotiated the loans?

A. No, I can't say. Mr. Callahan would take care of all the— [303]

Q. He took care of all that detail?

A. I would be instructed to write the check, but as far as having anything to do with it—

Mr. Stocking: From Exhibit 8-c I am taking two checks, and I would like to have them marked 8-c-1 and 8-c-2, please; that's proposed Exhibit 8-c.

(Whereupon, check, Montana Leasing to Inland Empire Racing Assn. was marked for Plaintiff's Exhibit No. 8-c-1 for identification.)

(Whereupon, check, Montana Leasing to Kent & Rusch was marked Plaintiff's Exhibit No. 8-c-2 for identification.)

Q. Handing you Plaintiff's Exhibits 8-c-1 and 8-c-2, I'll ask you if you can identify the signature on those exhibits? Do you know whose signature that is?

A. Well, it looks like Mr. J. A. Allen's signature.

Q. You are familiar with his signature?

(Testimony of Beatrice McLean French.)

A. Yes.

Q. And referring to these Exhibits 8-c-1, 8-c-2, Exhibit 6-a and 6-b, and Exhibits 41, 41-a and 41-b, what have you to say as to the preparation of all of those exhibits?

A. Would you repeat the question?

Q. I say, with regard to the preparation of all of those exhibits, can you identify them as to who typed them or what check protector was used on those exhibits?

Mr. Etter: You're referring to all of them, now?

Mr. Stocking: I'm referring to all of those exhibits I mentioned, seven exhibits.

A. Well, it looks like the type on the Callahan Underwood typewriter, and it looks like our check protector, because it was in very bad condition about that time.

Q. And did you at my request check your records for August 7, 1945, to determine whether or not you were working at your desk in the office on that particular day?

A. Well, I must have been working. I don't recall checking the records.

Q. You stated that you weren't on a vacation period at that particular time?

A. No, I was present in the office.

Q. On that particular date? A. Yes.

Q. Now, when Mr. Allen is in Wallace where does he make his headquarters, where does he make his office?

(Testimony of Beatrice McLean French.)

A. Well, he has used the Callahan office since I've worked there, during the last seven years, he has been in and out of the Callahan office, and he was usually there at various times.

Q. And from time to time you have prepared checks for him and done other stenographic services for him, is that correct?

A. I have done some work for Mr. Allen, yes.

Q. And the preparation of checks was included in that work? A. Yes.

Q. On various companies?

A. I don't have any independent recollection of just what companies they were on, but I have typed checks for him.

Q. Now, do you have any independent recollection of Mr. Allen being in your office on August 7, 1945, at the time these exhibits to which I've just referred and which you've just identified were prepared? Do you have any independent recollection of his being there on that particular date?

A. No, I haven't.

Q. You've tried to recall?

A. I have. I couldn't say that Mr. Allen was in the office on that date.

Mr. Etter: Would you repeat that, please, Mrs. French?

A. I can't say that Mr. Allen was in the office that date. I have no independent recollection of his being there.

Mr. Etter: That was what date?

(Testimony of Beatrice McLean French.)

Q. August 7, 1945; but with reference to Exhibits 8-e-1 and 8-e-2, would those exhibits have been prepared by you for any other person than James A. Allen?

A. No, not since—with Mr. Allen's signature on the check I don't imagine I would have prepared them for anyone else. [306]

Q. Now, at my request did you furnish me with checks on the Callahan Corporation bearing your signature which you did prepare on August 6, 1945, and on August 28, 1945, for the purpose of comparison with the exhibits to which I've just referred? A. Yes, sir.

Mr. Stocking: I'll have these marked.

The Court: What was the other date?

Mr. Stocking: August 28, 1945. That was the date of the other Lexington check that was filled in in blank.

(Whereupon, two checks of Callahan Consolidated, 8/6/45 and 8/28/45, were marked Plaintiff's Exhibit No. 46 for identification.)

Q. And are these the two checks to which I've just referred, which have been marked as Exhibit 46, which you've furnished to me for the purposes of comparison?

A. August 6 and August 28, 1945.

Q. Those checks were prepared by you on those dates, and the check protector used was the check protector on your desk, is that correct?

(Testimony of Beatrice McLean French.)

A. That's correct.

Mr. Stocking: At this time we'll offer in evidence Plaintiff's exhibit 45, identified as the \$6,000 check and voucher from Callahan Consolidated to Delaware Mines Corporation; we renew our offer, if an offer has been [307] made, as to Plaintiff's Exhibits 41, 41-a and 41-b, being the three Delaware Corporation checks totalling \$10,000 and dated August 7, 1945; Exhibit 46, consisting of two checks furnished for the purpose of comparison and identified by this witness; Exhibits 8-c-1 and 8-c-2, being the two Montana Leasing Company checks identified by the signature "J. A. Allen" and both dated August 7, 1945, which have been identified as bearing this check protector and written on this typewriter, and Exhibit 34, being the deposit slip prepared by this witness for the deposit of the \$10,000 Lucky Friday Extension check on August 7, 1945, to Delaware Mines Corporation; Exhibit 35, being the deposit slip prepared by this witness dated August 7, 1945, and whereby the \$3,000 check drawn by the Delaware Mines to Montana Leasing Company was deposited in Montana Leasing Company account, and deposit slip bearing identification 44, being Callahan Consolidated Mines, Inc., deposit slip of August 7, 1945, whereby the Delaware Mines check in payment of the \$6,000 loan was deposited. We will offer all of those exhibits at this time.

Mr. Etter: At this time, your Honor, the defendant will object to the admission of all of these

(Testimony of Beatrice McLean French.) exhibits and each exhibit separately on the ground and for the reason that no proper foundation has been laid for the admission of such exhibits under the evidence so far adduced in this [308] case or under any allegation made in any count in the indictment with reference to the defendant James A. Allen; on the further ground that all of the exhibits considered together are incompetent, irrelevant and immaterial to prove any allegation under any of the counts laid in the indictment with reference to the defendant Allen, and on the further ground that all of the exhibits, considered collectively, represent a hodge-podge of evidence incompetent, irrelevant and immaterial to this particular case, and will only lead the jury at the present time in the state of the record to conjecture and speculation as to the effect of all of the exhibits considered together or each exhibit considered separately. The entire transaction attempted to be shown by all of the exhibits in this case is not a material issue in this case, and does not show that even if the defendant Allen were privy to one or two of the particular transactions involved, that any of such privity of the defendant Allen brings him within any proof under the allegations and counts of the indictment. Likewise, we object further specifically to the admission of Plaintiff's identification 46, presented to the Court for admission on the ground of comparison, on the further ground that a comparison at this time is incompetent, irrelevant and

(Testimony of Beatrice McLean French.)  
immaterial under the issues made in this case and the purpose sought to be made by the admission of these exhibits.

The Court: I would like to see all the exhibits which have been admitted in evidence, actually, plus Exhibit 46 for identification. 6-a and 6-b have already been admitted. The objection to Exhibit 46 is overruled, and Exhibit 46 is admitted.

Mr. Etter: Exception.

The Court: Noted.

(Whereupon, Plaintiff's Exhibit No. 46 for identification was admitted in evidence.)

The Court: As to Exhibit 45 for identification, exhibits 41-a, 41, 41-b, exhibits 8-c-1 and 8-c-2, exhibit 34, exhibit 35, exhibit 44, ruling reserved. Are you through?

Mr. Stocking: No, I'm not, if your Honor please. May I proceed?

The Court: Yes.

#### Direct Examination

(Continued)

Q. (By Mr. Stocking): Mrs. French, when you were employed by the Pilot Company to assist in the original issue of the Pilot stock, what were your specific duties?

A. Typing the letters of transmittal and issuing the certificates; issuing the certificates means that I filled in the stubs and typed them.

Q. You worked with Mrs. Vermillion in doing

(Testimony of Beatrice McLean French.)  
that? [310] A. Yes.

Q. And under whose direction were you working when you were carrying out those functions?

The Court: This is with regard to the Pilot?

Mr. Stocking: With regard to the Pilot, when she was employed with the Pilot.

A. I don't understand that question.

Q. I say, under whose directions were you acting when you were doing these things?

A. Making the stock transfers, you mean?

Q. Doing whatever you were doing as an employee, yes; who did you consider as your employer?

A. Well, Mr. Allen was the one that asked me to help Irene, he and Mr. Keane.

Q. Yes, I think you mentioned that, and then when you were carrying out your duties who specifically, if anyone, told you what to do?

A. Mrs. Vermillion.

Q. You were acting more or less under her direction? A. That's correct.

Q. I hand you a portion of what has been marked for identification as Exhibit 29, and this portion consists of certificates running from number 543 through 1500, but not inclusive. Will you examine those to determine whether or not you can identify them as part of the records of the [311] Pilot Silver Lead Mines, Inc.?

A. They are the stock certificates.

Q. They are the stock certificates?

A. Of the Pilot Silver Lead.

(Testimony of Beatrice McLean French.)

Q. Yes; and the name "B. McLean," which appears, it's marked "A. Secretary" on the bottom line, that is your signature on these certificates, these particular certificates? A. Yes, sir.

Q. And these were prepared at the time that you were assisting in the issuing of certificates for Pilot, is that correct?

A. Now, that question, do you mean I prepared all of them?

Q. I say, these were signed by you at the time that you were assisting in the issuance of these certificates, is that correct?

A. That is correct.

(Whereupon, stock certificates in Lucky Friday Extension were marked Plaintiff's Exhibit No. 47 for identification.)

(Whereupon, six checks Gibson Co. to cash and B. McLean were marked Plaintiff's Exhibit No. 48 for identification.)

Q. Now, Mrs. French, handing you Plaintiff's Exhibit 47 for identification, can you identify those particular certificates? These are certificates 3508, 3512, 3514, 3515, 3516, and 3517. I'll ask you to examine them, all contained [312] in this one exhibit. Are you able to identify these certificates?

A. Yes.

Q. And they appear to be issued in the name of B. A. McLean, is that correct?

A. That's correct.

(Testimony of Beatrice McLean French.)

Q. And they also appear to have your endorsement on the back, "B. A. McLean"; that is your signature, is it, on the back of each certificate?

A. Yes, sir.

Q. And can you tell us how those stock certificates happened to be issued in your name, what the circumstances were?

A. It was issued in my name, I guess, just as street stock; I had no interest or ownership in the stock.

Q. And who did have any interest or ownership in the stock, to your knowledge?

A. I issued them at the instruction of Mr. Allen, and mailed them to him.

Q. Mailed them to him? A. Yes.

Q. And he instructed you to have them issued in your name? Did he instruct you to have them issued in your name? A. Yes, sir.

Q. And did he also instruct you to endorse the certificates [313] before you mailed them to him?

A. Yes, sir.

(Whereupon, copy letter to Allen was marked Plaintiff's Exhibit No. 49 for identification.)

Q. Did he state the purpose of having this done in that manner? What did he say?

A. He just called me and asked me to issue the stock in my name and endorse it and mail it to him.

Q. Do you recall what certificates this came out of, what stock it came out of?

(Testimony of Beatrice McLean French.)

A. It was out of one large certificate; I can't recall the number.

Q. Was that the Grismer certificate?

A. Well, most of those large certificates were in Mr. Grismer's name.

Q. And showing you Exhibit 49, is that a copy of the letter with which these certificates were mailed to Mr. Allen? A. Yes.

Q. That represents those certificates 3508 to 3517 inclusive, so that at the time you sent them down there were some certificates which had not come back for cancellation, is that correct, there were other certificates? A. Yes.

Q. Now, referring to Plaintiff's Exhibit 48, which appear to be five checks, E. J. Gibson checks, made out to B. A. [314] McLean, and one made out to cash, will you state which of these checks in this exhibit you can identify?

A. Do you want me to look them over?

Q. Look them over and just name which checks you can identify, as having endorsed.

A. I did not endorse this check.

Q. This is check March 21, 1947, this name on the back, B. A. McLean, and do you recognize that signature under that? A. J. A. Allen.

Q. Yes, and that endorsement does not appear to be your endorsement? A. No.

Q. All right, it does not. Now, refer to the next check in this series, of September 26, 1947. Is that your endorsement? A. Yes, it is.

(Testimony of Beatrice McLean French.)

Q. That is your endorsement, "Deposit to the account—

The Court: Which check is that?

Q. September 26, 1947; on the reverse "Deposit to the account of J. A. Allen, B. A. McLean" that is your endorsement? A. Yes, it is.

Q. And who requested that you make that endorsement on there?

A. Well, it was mailed to me for deposit to that account. [315] and I just endorsed it and put it in Mr. Allen's account.

Q. It was deposited in Mr. Allen's account; now, refer to another check in this Exhibit 48 for identification, April 7, 1947; does that appear to contain your endorsement?

A. No, that is not my endorsement.

Q. That appears to contain "B. A. McLean" and then underneath, "J. A. Allen." Is that Mr. Allen's signature?

A. To the best of my knowledge.

Q. And that check did not come into your possession? A. Not that I know of.

Q. This March 18, 1947, does that check contain your endorsement? A. No, it does not.

Q. And that contains whose signature underneath your name? A. J. A. Allen.

Q. And that check did not come into your possession? A. No.

Q. And a check dated March 15, 1947, of this series, does that check contain your endorsement?

(Testimony of Beatrice McLean French.)

A. Yes, sir.

Q. And that's marked "Pay to the order of the Idaho First National Bank, for the account of J. A. Allen, B. A. McLean" and did you deposit that to his account? A. Yes, sir. [316]

Q. Was that at his instructions?

A. It must have been.

Q. Now, this check of January 20, 1947, in this Exhibit 48, these E. J. Gibson Company checks, payable to cash and bearing no endorsement, did you ever see that check?

A. No, I haven't seen that check.

Q. You didn't get the proceeds from that check— A. No, sir.

Q. —for \$2,238.00? A. I did not.

Q. You didn't get the proceeds from any of these checks, then, that are made out in your name in this Exhibit 48?

A. No, because I had no ownership in the stock.

Mr. Stocking: We'll offer in evidence Exhibit 49, Exhibit 47, being the stock certificates, and reserve the offer of 48. May I ask one more question while they're examining the checks?

The Court: Well, it's rather hard for them to examine the exhibits and protect themselves as to your questions.

Mr. Stocking: Well, I'd like to have it considered with the offer, if the Court please.

The Court: Well, after they've got through ex-

(Testimony of Beatrice McLean French.)  
amining, you may ask your question, and then I'll rule.

Mr. Etter: Have you another question, counsel, that [317] you want to propound?

Mr. Stocking: Yes.

Q. (By Mr. Stocking): Did you ever open any account, Mrs. French, at E. J. Gibson Company of Spokane? A. No, sir.

Q. Did you to your knowledge have an account there with your approval and authority opened for you by anybody else?

A. Well, I don't know how you could consider it with my approval and authority.

Q. If any account was opened there it was without your knowledge or approval, is that correct?

A. Well, should I state in my own words just how I found out about it?

Q. Yes.

A. Mr. Allen told me he was selling stock through my name in E. J. Gibson Company, and when he sent the checks up I deposited them to his account. That's all I knew about the transaction.

Q. You didn't make any particular objection?

A. No.

Mr. Stocking: I'll renew my offer.

Mr. Etter: I'm going to object at this time, your Honor, to the admission of these exhibits on the ground that at the present time they're incompetent, irrelevant, [318] immaterial, and no proper foundation has been laid to connect the exhibits themselves with any unlawful act of the defendant as alleged

(Testimony of Beatrice McLean French.) and charged under any count of the indictment at the present time. At the present time they're incompetent, irrelevant and immaterial, because so far as the evidence thus far adduced, there's no connection shown of the defendant in the particular sale if there was a sale of this stock, with any count or allegation in the indictment at this time.

The Court: Let me see them.

Mr. Stocking: I think in considering the offer these exhibits which have been identified should be referred to.

The Court: Well, the checks have not been offered.

Mr. Stocking: No; they have been identified; there is testimony concerning them which bore on the other exhibits.

The Court: Exhibit 47 admitted, objection of the defendant overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 47 for identification was admitted in evidence.)

The Court: As to Exhibit 49 for identification, there's been no evidence as to the signature on the return receipt of the registry slip. Ruling reserved. You may proceed.

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mrs. French, were you ever given any instructions by the defendant Allen as to the transfers

(Testimony of Beatrice McLean French.)  
of stock from Grismer stock, the delivery of stock certificates of Grismer stock?

A. I issued stock for Mr. Allen which came from Mr. Grismer's stock, if that's a proper answer.

Q. Yes, you did that, I think you testified to that. Did you also at any time at Mr. Allen's instructions take any of the stock certificates which were in Mr. Grismer's name for delivery to any other person?

A. What do you mean by taking it?

Q. Well, I mean take any which had been left in the Callahan Consolidated office?

A. Yes, I cancelled them to cover stock that had been issued.

Q. And that was at Mr. Allen's instructions?

A. Yes, sir.

Q. Do you recall about when that was, what the circumstances were?

A. By that do you mean dates, or—

Q. Yes, I mean dates, and what occasion there was for cancelling his stock.

A. Well, there was stock issued for Mr. Allen, and then in turn I cancelled the stock that was kept there in the [320] drawer. Whether it was the private property of Mr. Grismer, it was issued in his name, and I just thought it was street stock.

Q. It was issued in his name?

A. It was endorsed.

Q. Endorsed by Mr. Grismer?

A. I'm quite certain it was endorsed.

Q. And left in your drawer?

(Testimony of Beatrice McLean French.)

A. It was left in the file in the back office, and I guess that was considered Pilot and Lucky Friday Extension and Mr. Grismer's file.

Q. And at Mr. Allen's instructions you did this, is that correct? A. That is correct.

Mr. Stocking: You may cross-examine.

#### Cross-Examination

By Mr. Etter:

Q. Mrs. French, do you personally know whether Mr. Allen had made any stock purchases from Mr. Grismer? A. What is the question?

Q. Do you know whether Mr. Allen had made any purchase of stock from Mr. Grismer, or any arrangement to purchase some of Mr. Grismer's stock? A. No, I don't.

Q. Did Mr. Allen ever tell you whether or not he had, or did he merely instruct you to issue or transfer shares off of [321] Mr. Grismer's certificate?

A. The stock was in the name of Mr. Grismer. That's not clear to me, whether that was Mr. Grismer's stock or not; I don't know. I considered it street stock, and I used it.

Q. You considered it the same kind of stock—

A. That it was Mr. Allen's, that's the way I thought about it; it was there in an envelope, and Mr. Allen told me to issue stock, and I cancelled that stock against it.

Q. And the street stock that you speak of, that was the same type as the stock that was admitted, Mr. Grismer's name was on it and endorsed, the

(Testimony of Beatrice McLean French.)

same as your name is on it and endorsed, is that correct? I mean, it was street stock in that sense?

A. Yes, it was there in the file; it was in the file, and I issued the stock, and I used that stock to cover the other stock that I issued.

Q. That's correct. Now, you might explain, Mrs. French, if you can, I think the jury would like to know what do you understand by street stock, what do you mean by street stock?

A. Well, my understanding of street stock is a block of stock issued in my name, like this, in which I have no interest at all. It took me about four or five years to find out that if you owned a thousand shares of stock that you didn't actually have to have that in your name and possess [322] it; I guess that isn't true.

Q. It's your understanding, then, that you could have four hundred thousand shares in your name, but there wouldn't be any of it belong to you?

A. That's correct.

Q. And that people who own maybe tremendous blocks of stock have that in other people's names?

A. That's my understanding, yes.

Q. And isn't that a common practice in the handling of stocks, mining stocks in particular?

A. I found that out in the last three or four years, yes.

Q. You found it out as a common circumstance in your own handling of stocks, isn't that right?

A. I personally do not own any stock.

(Testimony of Beatrice McLean French.)

Q. No, but I mean in your handling of stock transactions? A. Yes.

Q. And you have had stock transactions possibly on behalf of other people, with brokers?

A. I don't understand that question.

Q. Well, have you sent stock to brokers at the direction of other people during the time you have been handling mining stock? Have you been instructed, say, during the five or six years you've been in this particular job of yours, to send so many shares of this, that or the other stock to a certain broker or individual? [323]

A. I see; very seldom, for individual transfers.

Q. Which was street stock, is that right?

A. Well, I don't know; they usually give us a name and address; whether that's actually going to the person—

Q. You don't know? A. No.

Q. And you send it to the broker in that name?

A. That's right.

Q. And do you or do you not know that brokers themselves carry tremendous amounts of mining securities in street names, and not in their own name? A. I can't say.

Q. But the fact that you held stock in your name as street stock for Mr. Allen wasn't anything unusual in handling mining securities, was it?

A. Well, I don't know as you'd call that I held it; I made it out and mailed it right out, so I wasn't holding it.

(Testimony of Beatrice McLean French.)

Q. And there was nothing unusual to you about that, was there?

A. No, because there had been stock issued in the Pilot, and I considered it the same thing.

Q. And stock had been issued in your name as street *name* to other parties, isn't that so, in the five or six years you've been handling this type of work?

A. Well, the only recollection I have is, I don't know the [324] number of shares, but in the Pilot there was a considerable block of stock issued in my name which I also endorsed, and I had no ownership in it.

Q. Had no ownership, and it went to various people?

A. It went out, and then this particular Lucky Friday Extension stock, other than that I don't think there's ever been any stock issued in my name.

Q. Mrs. French, you've worked in the Callahan office for a number of years, haven't you?

A. Since January 19, 1942.

Q. 1942, and was Mr. Allen at that time an official of the Callahan Consolidated?

A. I don't know that he ever held an official office. I think he had the title at one time, vice president in charge of operations.

Q. In charge of operations?

A. They were constructing a new mill, and he had quite a lot to do with that.

Q. And was Mr. Callahan the president of the Callahan Consolidated?

(Testimony of Beatrice McLean French.)

A. Yes, he has been all the time I've been employed there.

Q. And when you were employed there Mr. Allen and Mr. Callahan worked fairly closely on problems relating to the Callahan Consolidated, is that so?

A. Well, I don't know so much about the internal problems, [325] but Mr. Allen was very active in the building of the mill. That's when I first started to work up there.

Q. And he was active in that respect?

A. Yes.

Q. He was around there a great deal?

A. Yes, that year, more so than any time.

Q. Than any time after, would you say?

A. Well, as far as the Callahan work, we're speaking of the Callahan work.

Q. Yes.

A. I would say I saw a great deal of him. Of course, I just became acquainted with him, and I might have noticed it more.

Q. And as you say, you did considerable work for Mr. Allen and did you write letters for him at different times when he requested it?

A. Yes, sometimes, whenever he happened to be in town. I'm really not a stenographer, though. I did work for him.

Q. Well, aside from stenographic work, if there was some little office work to be done that you were capable of doing, and he requested you to do it, you would ordinarily do it as a favor, isn't that so?

(Testimony of Beatrice McLean French.)

A. That's right.

Q. And you became very well acquainted with Mr. Allen? A. That's true. [326]

Q. Now, when Mr. Allen talked about you assisting on the Pilot, he didn't approach you—I'll put it this way—he didn't tell you that he wanted to employ you, did he? He didn't say it that way?

A. No.

Q. Didn't he tell you, as a matter of fact, Mrs. French, that these two organizations were starting, and there was considerable work probably to be done, and that it might be a chance for you to make a little additional money on this question of aiding in the issue?

A. If I remember, he asked me if I'd help Irene.

Q. Yes, and didn't he say Mr. Evans was sick at the time?

A. That must have been the time Mr. Evans was very ill.

Q. I'm merely trying to refresh your recollection; do you recall he said there was a chance to work there because of the fact Mr. Evans was sick?

A. I don't recall that he said that was the reason. He asked me if I'd help with it, and I know that the Extension work was very far behind, so undoubtedly that is why he—they, I should say, wanted me to help.

Q. And you did work with Mrs. Vermillion?

A. That's true.

Q. And you took your instructions in the office

(Testimony of Beatrice McLean French.)  
work from Mrs. Vermillion? A. Yes. [327]

Q. After that time?

A. Yes. Now, we're speaking of the stock transfer instructions, is that right?

Q. Yes, as to that particular issue.

A. Yes.

Q. And you worked with her on that particular issue? A. Yes.

Q. And who paid you for that? Was it the Pilot?

A. Pilot Silver Lead Mines.

Q. Pilot Silver Lead Mines paid you?

A. \$75.00 a month, I got for five months.

Mr. Etter: I think that's all.

#### Redirect Examination

By Mr. Stocking:

Q. Besides your compensation did you get a small block of stock in Pilot?

A. Yes, I received 5,000 shares of Pilot Silver stock; I thought it was at the same time the original issue went out, but Mrs. Vermillion said that we received it some time later.

Q. Around Christmas time?

A. And she delivered it to me; somewhere I have the letter of transmittal, and it was from a block of stock that was in Mr. Keane's name, I believe.

Mr. Etter: Who delivered it?

A. Mrs. Vermillion, and she had me sign a letter of transmittal. [328] I suppose that is in the Pilot records.

Q. (By Mr. Stocking): You disposed of that stock, did you?

(Testimony of Beatrice McLean French.)

A. Yes, I sold it through Pennaluna Company in Wallace; I believe it was sold through the account of my husband.

Q. Approximately how much did you realize out of it?

A. It was less than four cents a share.

Q. And when you were doing any of this work for Mr. Allen did he ever pay you or compensate you, I mean were you in his employ at that time?

A. During what period?

Q. Well, during the period of 1942, or when he was in and out of the office?

A. Well, there was no specific salary. Mr. Allen has given me a present at Christmas, and times like that, and—

Q. He'd pay you by the particular job, isn't that right?

A. Well, no; I was just doing it as a favor. He was connected with the Callahan Company, and if he had some little chore he wanted done, I took it for granted it was to be done; Mr. Callahan made no objection, and I just did it.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.) [329]

## GLYNN D. EVANS

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Stocking:

Q. What is your name, please?

A. Glynn D. Evans.

Q. And where do you reside?

A. Wallace, Idaho.

Q. What is your present occupation?

A. Present occupation?

Q. Yes. A. Timekeeper.

Q. And where?

A. For the Day Mines, at Burke, Idaho.

Q. How long have you resided in the vicinity of Wallace? A. Since 1905.

Q. And what has been your background, Mr. Evans, what if any employment in the last few years?

A. Well, I've worked at the post office, the courthouse, and with various mining companies.

Q. You've acted as secretary? A. Sir?

Q. As secretary for various mining companies?

A. Yes, sir.

Q. Are you familiar with the Lucky Friday Extension Mining Company? [330]

A. Yes, sir.

Q. Were you an officer of that company?

A. Yes, sir.

Q. And also an incorporator?

A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. And you're familiar with the Pilot Silver Lead Mines, Inc.?

A. I was sick at that time, and I didn't have anything to do with the Pilot Silver Lead.

Q. Were you one of the officers, though?

A. I was informed that I was.

Q. And were you named as an incorporator of that company, too? A. I believe I was.

Q. Do you know the defendant James Allen?

A. Yes, sir.

Q. How long have you known him?

A. Oh, offhand I'd say four or five years.

Q. And do you know the defendant in this action Clayton Keane? A. Yes, sir.

Q. Joseph Grismer? A. Yes, sir.

Q. How long have you known those men, respectively?

A. Well, I've known Mr. Keane ever since he started practicing in Wallace, and Mr. Grismer for possibly—well, since 1917. [331]

Q. Who first talked to you about the Lucky Friday Extension Mining Company?

A. I believe it was Mr. Keane.

Q. And that was, of course, prior to the organization of the company? A. Yes, sir.

Q. And prior to the organization of the company did you have any conversation with anyone else?

A. Before the company was organized?

Q. Yes, concerning the organization of the company?

(Testimony of Glynn D. Evans.)

A. Well, there was some talk of organizing a company, and that I was going to be an officer in it.

Q. Well, was that conversation with anybody else besides Mr. Keane, this talk you spoke of?

A. I can't recall right now.

Q. You don't recall now just what conversation you might have had before it was organized?

A. No, sir, I do not.

Q. Now, was there some question about you acting as an officer in that company? Were you approached on that question? Did someone ask you to be an officer in this company?

A. I believe so.

Q. And who was that?

A. Well, I thought it was Mr. Keane, and I think Mr. Allen [332] said something about it one or two times up there in the office, that I would be associated with the company, but I wouldn't swear to that right now.

Q. You think he may have been in the office at the time the incorporation was being considered? "In the office" you were referring to Mr. Keane's office, were you not?

A. I was in Mr. Keane's office, yes, sir.

Q. Did you have a small office in there in Mr. Keane's suite of offices? A. Yes, sir.

Q. In which you did your work as secretary for various mining companies? A. Yes, sir.

Q. Now, after the formation of the companies were there any regular meetings held?

(Testimony of Glynn D. Evans.)

A. No, sir, I wouldn't call them regular meetings.

Q. Did you keep any minutes in the ordinary course of the business? A. No, sir.

Q. You are familiar with the taking and keeping of minutes? A. Yes, sir.

Q. You've done that for other mining companies? A. Yes, sir.

Q. You were also a director of this company, were you not, as well as an officer? [333]

A. Yes, sir.

Q. Now, what were your duties as secretary of Extension?

A. All that I ever done was transfer stock.

Q. And where would you get your instructions as to the transfer of the stock?

A. They would usually come with the letters from various mining brokers.

Q. And this was in connection with these public offerings of the Extension stock that were made?

A. Yes, sir.

Q. And after the stock was issued what did you do?

A. I usually dropped the—made out the certificate, turned over the check, if I'd open the mail, to Mrs. Vermillion, and then I deposited the letters along with the stock either in the post office or in the mail train going out.

Q. Now, these were the letters you're talking about to send out the stock certificates?

A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. And they were sent to whom?

A. To the various brokers.

Q. And who prepared those letters?

A. Sir?

Q. Who prepared those letters of transmittal?

A. I did, myself.

(Whereupon, stock certificates [334] in Extension Company were marked Plaintiff's Exhibit No. 50 for identification.)

Q. I'll hand you a number of stock certificates which are in an envelope and identified as Plaintiff's Exhibit 50 for identification, and ask you if you can identify these stock certificates as ones which were issued by the Lucky Friday Extension Mining Company?

A. Yes, sir, these are the ones.

(Whereupon, letters of transmittal Extension stock to Gibson Company were marked Plaintiff's Exhibit No. 51 for identification.)

(Whereupon, letters of transmittal Extension stock to LaVigne Company were marked Plaintiff's Exhibit No. 52 for identification.)

Q. Do you recall which particular brokers participated in the distribution of this Extension stock, original issues?

A. Well, do you mean the original issue?

Q. Yes.

A. I believe it was Gibson & Company and Pen-naluna and Ed LaVigne & Company.

(Testimony of Glynn D. Evans.)

Q. Now, LaVigne and Company and Gibson were located where? A. Spokane.

Q. And Pennaluna was located where?

A. Wallace.

Q. Now, with regard to the certificates for Pennaluna, and [335] with regard to the delivery of the certificates to Pennaluna in Wallace, how was that delivery effected?

A. I delivered them personally.

Q. And the certificates that were delivered to the Spokane brokers you testified were sent through the mails? A. Yes, sir.

Q. Now, will you identify Plaintiff's Exhibit 51?

A. Yes, sir, I made those out.

Q. Just say that so the jury can hear it, will you please?

A. I have made all these certificates out.

Q. All of those letters out that I handed you?

A. Yes, sir; yes, sir.

Q. Now, with regard to Exhibit 51, these appear to be original letters bearing the signature "Glynn D. Evans"; is that your signature on each of these letters? A. It is.

Q. And these were addressed to E. J. Gibson Company, 5 Wall Street, Spokane, Washington?

A. Yes, sir.

Q. And you prepared the letters and put the certificates with these letters— A. Yes, sir.

Q. And mailed them to the—did the envelope contain the same address as the letter had contained?

(Testimony of Glynn D. Evans.)

A. Yes, sir, E. J. Gibson Company, 5 Wall Street, Spokane 11, [336] or 1, Spokane, Washington.

Q. And you placed these in the mails?

A. Yes, sir.

Q. Now, with regard to Exhibit 52, can you identify the letters in that exhibit?

A. Yes, sir, I prepared these the same way.

Q. And your signature appears on these letters, "Glynn D. Evans"? A. Yes, sir.

Q. And these letters appear to be addressed to whom?

A. Edwin LaVigne and Company, Radio Central Building, Spokane.

Q. And you had the certificates which are set forth in each letter accompany this particular letter? A. Yes, sir.

Q. And were they enclosed in envelopes addressed the same as the letter address?

A. Yes, sir.

Q. Did you put those letters in the mail?

A. Yes, sir.

Q. And you mailed them where?

A. Either in the post office or on the train.

Q. And that was where?

A. In Wallace, Idaho.

Q. Now, when you were performing your functions as secretary [337] there, under whose direction and control were you acting?

A. Well, I really don't know how you mean. As

(Testimony of Glynn D. Evans.)

the mail came in the morning, I usually opened the mail, and that was my instructions to make out the certificates as they wanted them and dispatch them.

Q. And what person or persons gave you those instructions as to having the certificates in that mail and making up these letters and mailing them back?

A. Well, Mr. Keane, I would say. I was working in there, and Mrs. Vermillion. That's just the same way that anybody does the work.

Q. Was there any other person that gave you any instructions in connection with the mailing of these letters?

A. Well, we have had telephone calls to make up stock for. It was just over the telephone, and Irene, Mrs. Vermillion, would give me those instructions to make out the certificates, and I would make them out and give them to her.

Q. And what certificates are those that you're speaking of? A. Lucky Friday Extension.

Q. To be made out to whom?

A. I don't recall who they were made out to, now.

Q. Who was dominating the Lucky Friday Extension Mining Company's affairs at the time you were acting as secretary there?

Mr. Etter: I'm going to object to that question on the ground it invades the prerogative both of the jury and the court, and it calls for a conclusion of the witness as to who was dominating.

The Court: Well, the jury is not bound or con-

(Testimony of Glynn D. Evans.)  
trolled by what any witness says, but the jury may hear, for such assistance, if any, as such may be in helping the jury ultimately come to a conclusion after it's heard all the evidence and considered it all. The objection is overruled.

Mr. Etter: Exception.

The Court: Exception noted. You may answer.

A. Will you state that question again, please?

Mr. Stocking: Read the question.

(Whereupon, the reporter read the last previous question.)

A. That's a hard question to answer, isn't it?

Q. Well, I should think you would know; you were working there.

A. Well, I would say that both Mr. Keane and Mr. Allen.

Q. Well, what part did Mr. Allen have in the affairs?

A. Well, I really don't know what part he had. He made several telephone conversations; he would come up there, and him and Mr. Keane I always thought was running it.

Q. You thought both of them were running it?

A. I did. [339]

Mr. Stocking: We'll offer in evidence exhibit 51 and exhibit 52.

Mr. Etter: We'll object on the ground there's no proper foundation laid; it's incompetent, irrelevant and immaterial as it affects any charge laid in the indictment in relation to Mr. Allen; there's no con-

(Testimony of Glynn D. Evans.)

nnection shown to the defendant; he's not privy to anything that appears here; it's incompetent, irrelevant and immaterial at this time.

The Court: I am only assuming this, I haven't seen the exhibits nor compared them with the indictment, are any of the letters contained in these exhibits which in the indictment it is charged were mailed?

Mr. Stocking: Yes, your Honor.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: Is there any question of that, Mr. Etter, of these letters mentioned in the indictment?

Mr. Etter: If there are letters mentioned in the indictment it's a question as to the materiality at a particular place in the proceeding when the proper foundation has been laid, but I don't think it's been laid with this witness, your Honor.

The Court: Well, counsel, there is always a question of when an exhibit is admitted; the court can't keep [340] out all the evidence until it's all in, any more than the court can insist that at an intersection each automobile stand by until the other has passed in front of it, so that to a degree there can be apparently some inconsistency. I'm going to admit these two exhibits. The jury will understand that the fact these two exhibits are admitted does not mean that the Court does or that the Court does not think that they reflect against the defendant. The admission merely means that

(Testimony of Glynn D. Evans.)

the jury will have the right to consider such along with such other exhibits as may be admitted, such as have been admitted, and along with the other evidence. Objections to exhibits 51 and 52 are overruled; exhibits 51 and 52 admitted.

(Whereupon, Plaintiff's Exhibits No. 51 and 52 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Now, with regard to the organization of the Pilot, when did you become ill?

A. About the 27th or 28th day of March, 1946.

Q. And you were rather seriously ill at that time? A. Very serious.

Q. So that you could not perform your functions as an officer or secretary of that company?

A. Yes, sir.

Q. But before you became ill were there any discussions with you with regard to the Pilot organization and the coming [341] offers?

A. It had hardly been worked out at that time, but I remember that I was mentioned as one of the incorporators.

Q. And who was working out the terms of the Pilot organization? Were they worked out there in Mr. Keane's office?

A. I imagine so. I couldn't say where they were worked out.

Q. Weren't you in Mr. Keane's office during the early part of 1946? A. I was.

Q. And was there any activity at that time in

(Testimony of Glynn D. Evans.)

the office with regard to the organization of the Pilot Company?

A. I heard there were several companies going to be organized, and I've forgotten which ones, but Pilot was going to be the next one.

Q. And who was connected with the organization of the Pilot?

A. Well, I thought the two same gentlemen.

Q. Well, who were they?

A. Mr. Keane, and Mr. Allen, and Mr. Grismer.

Mr. Stocking: That's all.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Evans, you stated in your direct testimony that Mr. Keane talked with you about the Lucky Friday Extension before the company was organized? A. You say I did say that?

Q. Yes, as I recollect your direct testimony, you said Mr. [342] Keane talked with you about this company before it was organized, that's the Lucky Friday Extension. A. Yes, sir.

Q. Is that correct, Mr. Evans?

A. I imagine it would have to be correct, if I knew I was going to be a secretary of it, or a director of it.

Q. Of course that would be correct, that Mr. Keane talked to you about it. Now, you also said Allen might have been there in your office one time, but you wouldn't swear to it. That was the exact language you used. You said you wouldn't swear to

(Testimony of Glynn D. Evans.)

it. Isn't it true, as a matter of fact, that Allen was never in the office when you ever had a discussion with Mr. Keane about the Extension, isn't that true?

A. They were in and out so many times I couldn't say. I've talked with Mr. Allen and with Mr. Keane.

Q. That's true, but you didn't talk with Mr. Allen before the organization, at the time of the organization of this company, isn't that so?

A. I don't remember for sure.

Q. You don't remember for sure?

A. That's right.

Q. As a matter of fact, when the government first talked to you about this, isn't it true you told them you didn't remember talking to Mr. Allen?

A. What was that, please?

Q. When government counsel or Mr. Denney, one of these investigators, talked to you, when this case was first being investigated, didn't you tell them that you didn't ever remember talking to Mr. Allen over here?

A. No, I won't say I told them that at all.

Q. What did you tell them about Mr. Allen?

A. I don't remember now what I told them.

Q. And when was the last time you talked to Mr. Denney or Mr. Stocking or the district attorney about Mr. Allen's part in this particular action, Mr. Evans? A. When was the last time?

(Testimony of Glynn D. Evans.)

Q. Yes, the last time. A. Well—

Q. Maybe I can refresh your recollection; wasn't it in Mr. Keane's office in Wallace a few days ago, before this trial started? A. No, sir.

Q. And how long ago was it, then?

A. Well, I couldn't tell you that, because I don't remember now.

Q. I see. When did you talk with either of these gentlemen here in Spokane since you've come down from Wallace?

A. Well, I was talking with Mr. Stocking at noon today.

Q. And what did he say about this testimony about Allen's [344] participation if any in this case?

A. He didn't mention Mr. Allen.

Q. What did he mention to you?

A. We wasn't talking about that at all.

Q. I see. All right. Now, you made another statement in your examination, Mr. Evans, that you thought that Mr. Keane and Mr. Allen were dominating the corporation. A. I did.

Q. Isn't that right? A. Yes, sir.

Q. But you made the further statement that you didn't know Mr. Allen's part in it?

A. I didn't know what?

Q. You didn't know what part Mr. Allen had in it, you didn't know his part in the organization. You made that statement, I think, to the reporter.

A. I thought that both the gentlemen were working together.

Q. You thought they were?

A. Yes, sir.

(Testimony of Glynn D. Evans.)

Q. But you didn't know Mr. Allen's part in it?

A. No, sir. He wasn't named as an officer.

Q. Anything you knew about Mr. Allen's participation was from what somebody told you, isn't that right?

A. No, nobody told me anything about it; they were just together doing it amongst themselves, and then they'd tell [345] us what to do.

Q. Who would tell you what to do?

A. Mr. Keane, or Mr. Allen would call up on the telephone and want something done, and Mrs. Vermillion would tell me to make out so many shares of stock.

Q. That was after the company was organized?

A. Yes, of course it was after the company was organized.

Q. After it was organized and the stock was issued?

A. You don't make out stock before the company is organized.

Q. Of course you don't, I agree with you. That's when Mr. Allen talked to you, after you had your stock printed, after your company was organized, isn't that correct?

A. Well, partly. Some of it is, yes.

Q. Yes, but you say here, your direct testimony is that during the organization of this corporation that you thought Allen might have been there, but your statement was that you wouldn't swear to it?

A. He said that we're going to have a job for you.

(Testimony of Glynn D. Evans.)

Q. Who said that? A. Mr. Allen.

Q. When did he say that to you?

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Well, do you remember any of the things that Mr. Keane [346] said to you?

A. Well, I happened to be working there, and they said that I was going to work with them, and would it be all right with me, and I said certainly.

Q. In fact, prior to the organization of this company Mr. Keane did all the talking with you about Lucky Friday Extension, isn't that so?

A. Well, I don't recall. I won't say for sure whether it's so or not, whether he did it all or not.

Q. Well, you don't remember much about anything, then, do you, in this organization?

A. Not a great deal.

Q. You wouldn't be willing to sit up there and swear to anything definitely, would you?

A. I'll sit up here and swear to anything I've said. I made out all the stock certificates and mailed them, and I became sick.

Q. And you became secretary, and then became sick? A. Yes, sir.

Q. You'll swear to that? A. Yes, sir.

Q. But beyond that you're not going to swear to anything up here in this case, isn't that right?

A. I think both the gentlemen told me I was going to work for them in this company. [347]

Q. You think they both did. All right, when did Mr. Allen tell you that?

(Testimony of Glynn D. Evans.)

A. Well, it must have been in the time of the organization of the company.

Q. Now, it must have been before the organization, is that right? A. I can't recall it.

Q. Now, you don't know whether you talked to Allen before or after, do you, isn't that so?

A. Well, I knew both of those gentlemen, and they were in there—

Q. Well, you know me, too, don't you, Mr. Evans? A. Yes.

Q. Well, was I there on any of these transactions? A. No, sir.

Q. All right. Do you remember now definitely whether Mr. Allen was there during the pre-organization of this company?

A. No, I don't know.

Q. You don't. After the company was organized did you talk with Mr. Allen over the 'phone?

A. No, sir.

Q. You never talked with Mr. Allen over the 'phone? A. No, sir.

Mr. Etter: That's all. [348]

Mr. Stocking: No further examination.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Stocking: Call Mr. Grismer. I might advise the Court Mr. Hawkins is also here, Mr. Grismer's attorney.

The Court: Yes, all right.

Mr. Stocking: I wanted the record to show that.

The Court: The record will show that Mr. Haw-

kins, attorney for Mr. Grismer, is in the courtroom. Is that correct, Mr. Hawkins?

Mr. Hawkins: Correct. I don't know what significance it has.

\* \* \*

Mr. Stocking: With the Court's permission I would like to recall Mr. Evans. I completely overlooked having [349] him identify these stock stubs. They are going to be necessary as foundation evidence for tracing stock certificates, for Mr. Denney's schedules, and I want to have these exhibits identified.

The Court: All right, Mr. Evans may re-take the stand. He's already been sworn.

#### GLYNN D. EVANS

recalled as a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: I'm having marked Lucky Friday Extension Company stock stubs from 1 through 2743. These are contained in eleven volumes, and excludes from the last volume 2744 to 2750 inclusive.

(Whereupon, stock certificate stubs of Lucky Friday Extension Company were marked Plaintiff's Exhibits No. 53 to 63 inclusive for identification.)

The Court: Eleven volumes of stock certificate stubs, is that correct?

Mr. Stocking: That's correct.

The Court: Excluding what, Mr. Stocking?

(Testimony of Glynn D. Evans.)

Mr. Stocking: Excluding in the last volume the stubs for certificates 2744 through the end, which is 2750, inclusive. [350]

Direct Examination

By Mr. Stocking:

Q. Now, can you identify these exhibits just referred to, Mr. Evans? A. Yes, sir.

Q. And these were prepared by whom?

A. By myself.

Q. As secretary of Lucky Friday Extension Company? A. Yes.

The Court: They were prepared by whom?

A. I prepared them.

Q. And the last certificate, 2743, is dated April 12, 1946? A. Yes, April 12.

Q. And that was the last stub which was prepared by you, is that correct, from your examination?

A. From the time that I was sick, and then I came back and possibly wrote a few more.

Q. Oh, you did come back later on?

A. Sometime in October, after I got my glasses, I believe, but not very many of them.

Q. In October, 1946, you did write some more?

A. Yes, sir, either October or September.

Mr. Stocking: We have three additional records that will cover that time in the fall. Certificates 3001 to 3250 will be Plaintiff's 64.

(Whereupon, stock certificate [351] stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 64 for identification.)

(Testimony of Glynn D. Evans.)

Mr. Stocking: Certificate stubs 3251 to 3500 will be Plaintiff's 65.

(Whereupon, stock certificate stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 65 for identification.)

Mr. Stocking: And certificate stubs 3501 to 3750, that book will be marked 66.

(Whereupon, stock certificate stubs of Lucky Friday Extension were marked Plaintiff's Exhibit No. 66 for identification.)

Q. (By Mr. Stocking): Now, you have examined these last three exhibits, have you, Mr. Evans?

A. Yes, sir.

Q. And Exhibit number 64 you prepared beginning with certificate number 3187 and ending—

The Court: Beginning when?

Q. Certificate number 3187, on October 3—just a minute—beginning with certificate number 3195, to certificate stub 3250 inclusive, certificate 3195 being dated October 4, 1946, and you prepared all of the stub book marked Exhibit 65, is that correct?

A. It would appear that way.

Q. And in exhibit number 66, from certificate 3501 through [352] 3507, which is dated December 12, 1946? A. Yes, sir.

Q. Is that about the time that the records went out of your possession? A. That's right.

Mr. Stocking: At this time we'll offer in evidence—

The Court: I don't like to be captious, Mr.

(Testimony of Glynn D. Evans.)

Stocking, but it's been very difficult for me to know with respect to these stub books when you were testifying and when Mr. Evans was testifying.

Mr. Stocking: I think it was probably because I was attempting to hurry it up.

The Court: I think you'd better ask him what he knows about those books; ask him whether he prepared them or not, instead of telling him.

Q. (By Mr. Stocking): Did you or did you not prepare the stub certificate books to which we have just referred, excluding those which we indicated in certain of those books?

A. I prepared those.

Mr. Stocking: We'll offer these as exhibits, offering those portions of certain books which he has identified as having been prepared by him.

The Court: Well, counsel—is there an objection? [353]

Mr. Etter: Yes, there's an objection.

The Court: All you say is that he prepared some stubs. There's nothing further shown.

Mr. Stocking: Well, he said he did this in the course of his authority as secretary to the company.

The Court: Well, suppose all he did was prepare some stubs and let it go at that. Would I be interested in it?

Q. Well, you've already testified that you had issued the stock certificates?

A. Any one of those stubs that I've written up, the certificate has gone out to the broker or to the individual person that sent in the corresponding certificate, in the order that they were issued.

(Testimony of Glynn D. Evans.)

Q. And you prepared that certificate, you say?

A. Yes, sir. Most of that writing in there is mine.

Q. And made the notations on the stubs at the time the original certificates were issued?

A. Absolutely.

The Court: Exhibits 53 to 66 inclusive are offered. There's an objection. I am assuming that there is much of those exhibits that will be of no great help to us in this case.

Mr. Stocking: That's correct, your Honor; they're merely offered as records of the corporation for the purpose [354] of—

The Court: Ruling reserved.

Mr. Stocking: That's all at this time, Mr. Evans.

The Court: Just a moment; is there any cross-examination of Mr. Evans on this further examination?

Mr. Etter: No, your Honor.

(Whereupon, there being no further questions, the witness was excused.)

### JOSEPH V. GRISMER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. J. V. Grismer.

Q. Are you the Joseph Valentine Grismer who

(Testimony of Joseph V. Grismer.)

is one of the defendants in this case? A. Yes.

Q. Where do you reside, Mr. Grismer? [355]

\* \* \*

Q. Mr. Grismer, in view of what has transpired, will you state to the Court and jury whether there has ever been any discussion between you and myself or Mr. Erickson with regard to your testifying, as to whether any promises have been made to you, or commitments, or anything of that sort?

A. There have none been made.

Q. There have been none made? A. No.

Q. How long have you lived in Wallace?

A. Approximately 33 years.

Q. And what has been your business during that time, your [360] occupation?

A. Prospecting and mining.

Q. And what are some of the names of the mining companies that you've worked for in the past several years?

A. The Hecla Mining Company, the Polaris Mining Company; I used to work for the Federal and for the Day mines.

Q. What type of work were you doing, what positions were you holding?

A. My last position—and also for the Callahan Consolidated—my last position was the superintendent of the Callahan Consolidated.

Q. And you've held superintendent's positions in some of those other companies too, have you not?

A. I was foreman and shift boss, and so on, and miner.

(Testimony of Joseph V. Grismer.)

Q. I meant supervisory positions.

A. Supervisory capacity, yes.

Q. You know the defendant Allen here, and the defendant Clayton Keane? A. I do.

Q. And how long have you known these other defendants?

A. I first met Mr. Allen I think it was in '38, 1938.

Q. How about Clayton Keane?

A. I've known Clayton Keane more or less for at least twenty years.

Q. Now, you're familiar with both the Lucky Friday Extension [361] Mining Company and the Pilot Silver Lead Mines, Inc., is that right?

A. I didn't get the first.

Q. The Lucky Friday Extension Mining Company and the Pilot Silver Lead Mines, Inc., are you familiar with those companies? A. Yes.

Q. You were an officer of the Extension Company, were you not? A. I was.

Q. Were you also one of the incorporators?

A. I believe so.

Q. Can you tell us what events led up to the formation of the Lucky Friday Extension Mining Company, what if any conversations took place, and who participated in the plans for the formation of that company?

A. It first started in what is known as Pat's Bar.

Q. Is that a location in Wallace?

A. It is a location in Wallace, a restaurant and bar. There were a group of us in there having a

(Testimony of Joseph V. Grismer.)

sociable drink, and in this group was Mr. Sekulic of Mullan——

**Q.** Of the Big Friday?

A. Of the Big Friday; Mr. Keane, Mr. Allen, myself, and there were a few soldiers in there, and numerous other people. [362]

**Q.** Were the soldiers, you say, were they participating in your conversation, or were they just in the bar?      A. They were just in the bar.

**Q.** But the people you mentioned before, they were participating in a conversation?

A. More of a group, yes.

**Q.** And what was said there, if anything?

A. Mr. Sekulic made the statement that there is a piece of ground west of the Lucky Friday——

**Q.** That's the Big Friday?

A. The Big Friday, which ought to be developed, or words to that effect, and I have known of this ground for the past 25 years and thought well of it. It has great possibilities as a mine, and I then took Mr. Allen aside and told him my opinion of this particular ground, and said it really should be developed. We talked it over for a few more minutes, and there were no more done that night. At this time I was still superintendent, or still am, I mean superintendent of the Callahan Consolidated. The next day I went to work early, worked all day, it was during the war, and about toward evening, 4 o'clock, presumably, I had my work done and the office work done, and I went down into the Metals Bar.

(Testimony of Joseph V. Grismer.)

Q. That's another location in Wallace?

A. That's another location, in the Samuels Hotel, and there [363] was a group there making merry and drinking a bit, and in that group was Mr. Keane and Mr. Allen, and as I came in, Mr. Allen then took me aside and said that they had decided to develop that piece of ground, or to promote a company on it, words to that effect which I can't quite recall, and that they had agreed that they would develop it through the Lucky Friday.

Q. Develop it through the Big Friday?

A. Through the Big Friday, using their shaft, which was quite an advantage, and they had agreed to organize a company, and he said that "We will take care of that" meaning Mr. Keane and himself.

Q. Mr. Allen said that?

A. Yes, meaning that Mr. Keane—well, I presumed he meant himself, when he said, "We would take care of all details," and that "we want you to be president of the company; there will be no work connected, we'll take care of all details."

Q. Did he indicate what the name of the company was going to be?

A. I don't know whether he said so right at that time or the following day, but I was later informed it was to be the Lucky Friday Extension; I think it was right at that time.

Q. Do you happen to know who selected the name of the company? A. No, I don't. [364]

Q. You were informed by whom that that was the name?

(Testimony of Joseph V. Grismer.)

A. I was informed by Mr. Allen that that would be the name of it.

Q. Now, what other events led up to the formation of this Lucky Friday Extension?

A. Well, I was very glad to see that the property would be developed. As I stated, I am but a miner and a prospector, and I know that it is a mighty good piece of ground, and I wanted to see it developed, and it pleased me, and I entered wholeheartedly into this scheme where I was to head the company and take care of the development work, and they, as I said before, were to take care of all other details.

Q. By working toward the development of it, you meant the actual mining operation was going to be under your charge, is that right?

A. Yes, all mining operations were to be under my direction, subject to the engineers, of course.

Q. Now, what was done with regard to acquiring the properties for the company, if you know?

A. I thought at the time that Mr. Sekulic had owned the property. After a few days it was brought to my attention that he did not own the property, and Mr. Allen told me that Mr. Lakes was to come in and that he and I would locate the property in my name. [365]

Q. Now, is that Arthur Lakes, the mining engineer here in Spokane?

A. Yes, and geologist.

Q. And geologist?

(Testimony of Joseph V. Grismer.)

A. Yes, and Mr. Lakes then came in, and I made arrangements to be off from the mine long enough to, with Mr. Lakes' help, we located six claims in my name.

Q. And those were adjoining the property of the Big Friday, is that right?

A. That was adjoining the Big Friday, is that right?

A. That was adjoining the Big Friday.

Q. Were these all of the claims that went into the Extension then, or were there some other claims?

A. Well, there was just those six that went in at that time.

Q. Now, were there any other negotiations with the Big Friday with respect to the use of their shaft?

A. All these negotiations were made in my absence. I was not present when any deals was made with the Lucky Friday, with the Big Friday, as you call it.

Q. Did either Mr. Keane or Mr. Allen keep you informed of those negotiations?

A. I was slightly informed as to what was going on, but I didn't know any details until the contract was brought to me.

Q. Brought to you for your signature as president of the company? [366] A. It was.

Q. And who brought it to you, if you recall?

A. I can't recall. It was given to me, and I read it first.

(Testimony of Joseph V. Grismer.)

Q. Now, with regard to the stock which was issued in that company, do you recall the situation as to what the plan was for issuing the stock for the properties?

A. I was told that all of the stock would be issued to me for the property, and that I would then turn the stock back to the corporation, after endorsing all the certificates, which I did.

Q. And who told you that?

A. Mr. Allen.

Q. And you endorsed back to the company, then, a substantial portion of the stock which had been issued, is that correct?

A. I endorsed all the certificates that were brought to me.

Q. And after that was done, did there still remain a large portion of a block of stock in your name?

A. I was never permitted or had the opportunity of examining the books or anything of any kind, and therefore I wouldn't know what took place; I never could get any information.

Q. Did you see the company's prospectus at the time it was put out? A. Yes. [367]

Q. That did refer to a large block of stock being outstanding in your name, did it not?

A. According to the prospectus it was, yes.

Q. But it never came into your actual possession, is that correct?

A. Never was in my possession.

(Testimony of Joseph V. Grismer.)

Q. Did you exercise domination and control over that block of stock— A. No.

Q. —or did someone else?

A. Somebody else did; I never did.

Q. And who was the other person who did that?

A. I wouldn't know.

Q. You don't know who did that? A. No.

Q. Now, what part if any did you take in the preparation of the company's prospectus for Extension prior to this first public offering of stock along about July, 1945?

A. My participations were very limited. I remember going out with Mr. Tabor to take pictures of the properties, and also a gentleman from Spokane, I don't recall his name.

Q. He was a photographer?

A. A photographer.

Q. And who was the company's attorney?

A. Mr. Keane was supposed to be the company's attorney. [368]

Q. And did they have a Spokane attorney too?

A. Mr. Johnston was also participating in the organizing of the company and working up of the prospectus.

Q. He participated more in connection with the prospectus, did he not? A. That's right.

Q. And he's Elmer Johnston of Spokane?

A. That's right.

Q. Did you have any conferences with him regarding the prospectus or what should go into the prospectus, in the Extension prospectus?

(Testimony of Joseph V. Grismer.)

A. I don't think I ever had any conferences with him as to what went into the prospectus.

Q. Did you ever visit his office in connection with Extension at all, that you recall?

A. I don't believe I did regarding the Extension, but I did regarding the Pilot.

Q. Yes; well, I'll come to that a little later. Now, with regard to Extension, did you have any part in the handling of the funds which came from the brokers? A. None whatsoever.

Q. Did you have any part in the writing of the checks of the Extension Company? A. No.

Q. Did you have anything to do with the company's financial [369] affairs?

A. None whatsoever.

Q. You were president of the company?

A. Yes.

Q. And who directed that you should not have anything to do with these affairs?

A. I was told that Mr. Keane would be the company's attorney and take care of all the financial affairs of the company.

Q. And who told you that? A. Mr. Allen.

Q. And you understood, as you have previously testified, your part was to develop these properties, is that correct? A. I didn't quite get that.

Q. Your part was to develop the properties?

A. I was to direct the mining, yes.

Q. Now, after the money was received from the brokers did you begin some mining operations under the contract with the Big Friday?

(Testimony of Joseph V. Grismer.)

A. There was a contract let with the Big Friday to do the work.

Q. Under whose supervision?

A. Under mine, mostly, and also Mr. Lakes'.

Q. And could you just describe very briefly what was done, and where it was done? [370]

A. There was a great deal of, oh, you might say rehabilitating the Big Friday, such as driving a raise to the surface, laying heavy rails in the main haulage, and connecting the different levels for ventilation purposes, which was very necessary.

Q. That was all necessary for the sinking of the shaft?

A. It was a great aid to it, yes, and then we sank the shaft 400 feet.

Q. From the thousand foot level you went down to the 1400 foot level, is that correct?

A. That's right.

Q. Then describe just briefly what operations were carried on at that level.

A. Then there was a cross cut driven to the vein southerly, and while they were doing that I undertook to explore for a vein northerly; I drove two hundred and some feet across up there, and then we started drifting west on the Extension vein, northwest, kind of; the exact footage I can't recall. It was approximately 500 or close to 600 feet of drifting.

Q. And during what period was this work accomplished, approximately what months?

(Testimony of Joseph V. Grismer.)

A. Oh, it started approximately the fall of '45 and through '46 into '47, or about the first of '47 it stopped.

Q. There was some operations being carried on during that [371] period from time to time, or at all times? A. All the time.

Q. At all times?

A. Yes; nearly all the time, anyway.

Q. And approximately how much money was actually expended on these mining operations?

A. As close as I can recall it was between seventy-five and about eighty-five thousand dollars.

Q. That was paid to the Big Friday under the contract?

A. That was done under the contract, by the Lucky Friday.

Q. Yes. Now, you were also president of the corporation in January, 1946, when they made the second offering of stock, were you not?

A. Yes, sir.

Q. And they had increased the price from—what was the initial price, do you remember?

A. Twelve and a half cents.

Q. Twelve and a half cents, and the company to net what?

A. The company was to net ten cents.

Q. And do you recall the price of the second offering?

A. I believe it was thirty cents or thirty-five, I don't recall.

(Testimony of Joseph V. Grismer.)

Q. It was in that neighborhood; the price had gone up during the fall of '46?

A. That's right. [372]

Q. Did you have anything to do with the finance, the handling of the monies that came in at that time?

A. None whatsoever.

Q. The same arrangement still prevailed?

A. Yes, it did.

Q. Now, going from the Extension for a moment to the Pilot, can you give us the background of the arrangements which were made for the organization of the Pilot Silver Lead Mines, Inc.? Who participated in those arrangements?

A. Well, my partners and I owned the Pilot for approximately twenty-five years.

Q. Who are they, Mr. Grismer?

A. My brother George; E. L. Gadau of Spokane, and William Walker, I think of Opportunity or Otis Orchards.

Q. You and these other gentlemen had owned these properties— A. Yes.

Q. —for twenty five years?

A. Approximately that; since 1924, anyway.

Q. That is one portion of what eventually became the Pilot?

A. We owned the eight claims, patented now, and we held on for a good many years, there was a great deal of work done, and a mighty good showing. When this war came along my partners decided that it was time that we organized and

(Testimony of Joseph V. Grismer.)

developed the ground, and I was talking about organizing the Pilot Company and so forth, and I talked it over [373] with Mr. Allen, and he then made the statement that it would take us a great deal of time and money to organize and raise the money to do the work, while he says "We can do it in a few weeks."

Q. About when did these conversations take place, I mean just the approximate month and year?

A. About '46.

Q. The early part?

A. Early part of '46.

Q. I see.

A. And he said it would not take us no time to raise the money for the work, and I agreed with him, and over the objections of my partners, why, I let him go ahead.

Q. Did he talk to your partners at that time about it?

A. I talked to my partners, yes.

Q. You did, but he did not, is that right?

A. I don't think so.

Q. And what was the next arrangement that was made in regard to the formation of the Pilot Company?

A. It was to be on the same scale and plan and the same organization that took the Extension, meaning Mr. Keane and I presume Mr. Allen was to participate all the way through like they had in the Extension. We organized the Pilot Mining Company, and—

(Testimony of Joseph V. Grismer.)

Q. What was your position to be in the Pilot?

A. I believe I was one of the promoters, in fact I know I was, or the organizers to get the company going and get the different properties together.

Q. One of the incorporators?

A. I believe I was one of the incorporators; I don't quite recall.

Q. And what would your official position be, if any?

A. After we were organized, everything going good, I was informed that Mr. Keane would be the president, Irene Vermillion vice president and director, and Mr. Evans a director.

Q. And secretary? A. And what?

Q. And secretary, wasn't he?

A. And secretary, yes.

Q. Weren't you given an official title or position?

A. Well, I was supposed to look after the operations of the ground, the work in the mine.

Q. You were the manager, were you not?

A. Mine manager.

Q. Mine manager; and was there any discussion about—of course, you weren't an officer of this company, so was there any discussion with you as to how the finances would be handled when the money was raised?

A. That was entirely out of my hands. [375]

Q. Now, some other properties were put into the Pilot besides you and your partners' properties,

(Testimony of Joseph V. Grismer.)

were they not? A. Yes, several of them.

Q. And who put those properties in?

A. Take them individually?

Q. Yes.

A. To start with, the Cincinnati group.

Q. And that's—

A. I told Mr. Allen that that would be a desirable group to have in there to make a good compact group of mining claims.

Q. Did they lay next to the properties that you were putting in? A. They adjoined it.

Q. Yes.

A. And Mr. Allen told me to see Mr. Herrick.

Q. Herrick was the man who was the head of the Cincinnati group? A. He was.

Q. And you went there at Allen's direction?

A. Yes.

Q. And who made the negotiations as to what arrangements were made with Mr. Herrick?

A. I started all the negotiations with Mr. Herrick. He was somewhat reluctant to go in, as he had another deal on [376] with some other people, but I kind of talked him out of it, and convinced him that he'd have quicker action with the Pilot, sincerely I thought so, and after he more or less agreed that he would talk business, I turned him over to Mr. Allen.

Q. Whatever final arrangements were made were not made by you? A. No.

Q. They were made by Mr. Allen?

(Testimony of Joseph V. Grismer.)

A. I don't know whether it was Mr. Keane or Mr. Allen.

Q. I see. Now, were there some other properties involved?

A. There was the—I can't recall that—

Q. Do you know Mrs. Emeline Phelan?

A. Mrs. Phelan, yes, the Phelan Group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen.

Q. Did you introduce her to Mr. Allen?

A. I did.

Q. And who finally made whatever negotiations were made as to the deal?

A. I presume that it was Keane and Allen; I just presume so, I don't know.

Q. And who, if anyone, asked you to go see Mrs. Phelan?

A. I talked it over with Mr. Allen.

Q. Now, was there a large block of stock issued to you in [377] connection with the Pilot Company?

A. I was to get 900,000 shares to be divided among my partners for the property.

Q. Did you—was all that stock actually issued to you? A. I don't quite understand.

Q. Was that stock actually issued to you, all of that stock? A. That 900,000?

Q. Yes.

A. Later on, after while, it was, yes, after about a year.

(Testimony of Joseph V. Grismer.)

Q. And did you get the benefit of that stock? Do you own that stock now?

A. I divided it up with my partners, and I told them at the time that in view of the fact that I've owned the property before I ever knew most of them, done a great deal of work, and took them in, and that there might be some more stock needed to perhaps develop another property or so, that I was going to keep the lion's share for the time being, which I did.

Q. Do you recall how that was divided?

A. Two of them each got 125,000 shares, and one got 175,000.

Q. And how much did that leave you?

A. That left me 475,000 shares. I figured actually that I was to get 175,000 for my portion of the property, the same as the others, and that in time I would divide some of the other with them again. That left 300,000 shares. [378]

Q. You'd divide some of it with whom?

A. With the partners.

Q. Oh, with your other partners?

A. Yes.

Q. If it wasn't necessary to acquire an additional piece of property?

A. Anything that wouldn't be necessary to be used in helping the company along, maybe perhaps have to buy some more property, and the stock would be there.

Q. What finally happened to the stock you

(Testimony of Joseph V. Grismer.)

divided up among the partners? Did they retain that stock?

A. I had it in a safe—not a safe, I mean in my filing cabinet in the office, and it disappeared from there.

Q. That stock was taken without your permission, is that correct?

A. Without my knowledge or consent.

Q. Had you endorsed the certificates?

A. It was so arranged that all stock was endorsed.

Q. Now, you're referring to which block of stock? Are you referring to the stock that was to be your stock, or the stock that was to go to your partners?

A. All this stock was brought to me, all these certificates—and it was insisted that I endorse them all before they went into escrow.

Q. Who insisted that you endorse them? [379]

A. Mr. Allen.

Q. And is it my understanding now that the stock which you had issued—which you had secured for your partners, that that was the stock that disappeared?

A. That's the 300,000, that disappeared.

Q. Now, what about the 450,000 that was issued in your name, I mean that was to be your share?

A. That was part of it.

Q. Has that all disappeared?

(Testimony of Joseph V. Grismer.)

A. I loaned Mr. Allen 100,000 shares, and 300,000 disappeared, leaving me 75,000.

Q. You still had 75,000 shares?

A. No, I haven't got all of that now.

Q. I mean you had the use of 75,000 shares?

A. I did.

Q. But the rest of the stock disappeared; do you know where it went to?

A. I've been informed that it was taken out and put into this trustee account, the 300,000.

Q. Well, did you ever have any discussion about that stock with either Mr. Keane or Mr. Allen?

A. No.

Q. About its disappearance?

A. No use. You couldn't discuss anything with it; it was gone. I let them know what I thought of it, but that was [380] all.

Q. Now, in connection with the Pilot, I think you mentioned previously that you had at one time visited Elmer Johnston's office, was that your testimony?

A. Yes, I did visit Elmer Johnston's office regarding the prospectus of the Pilot.

Q. Who if anyone accompanied you there?

A. I am quite sure that Mr. Allen was with me.

Q. Do you have any recollection of any incidents that were discussed there at that time?

A. It was mostly the history of the company, of the ground, and its—well, its titles and so on.

Q. And you were able to furnish some of that information? A. Yes, I did.

(Testimony of Joseph V. Grismer.)

Q. Was there any other incident that refreshes your recollection of the visit to Mr. Johnston's office? A. No, I don't.

Q. Was there something said about having your picture in the prospectus?

A. Oh, yes, that was in there, but it didn't so happen.

Q. You didn't want your picture?

A. I didn't want my picture in it, no.

Q. Now, did you bring with you an agreement that you once mentioned to me, Mr. Grismer, an agreement with Mr. Allen that you once mentioned to me, did you bring that with you? [381]

A. Well, what agreement have you reference to in particular?

Q. Well, this was some agreement that you mentioned with regard to certain stock.

A. Yes.

Q. Have you it with you? A. Yes, sir.

(Whereupon, agreement between Grismer and Allen was marked Plaintiff's Exhibit No. 67 for identification, dated 9/1/45.)

(Whereupon, agreement between Grismer and Allen was marked Plaintiff's Exhibit No. 67-a for identification, dated 8/1/46.)

Q. I'll hand you these agreements, which have now been marked for identification 67 and 67-a, and ask you if you can identify those, Mr. Grismer?

A. Yes, sir.

(Testimony of Joseph V. Grismer.)

Q. Whose signature appears on those agreements? A. Mr. Allen's and mine.

Q. And on both agreements?

A. On both agreements.

Q. And what is the date which appears on those agreements?

A. One of them is September 1, 1945, and the other one August 1, 1946.

Q. Was that the date that those agreements were actually executed? A. No. [382]

Q. What date was these agreements executed on?

A. These were typed and executed in the early part of 1948.

Q. And where were they typed and executed?

A. Mr. Allen's office.

Q. What were the circumstances which led up to the executing of these agreements at that time?

A. I was in Mr. Allen's office, and we were talking things over in general, and he said "You know" he said "we made agreements, verbal agreements, whereby we could borrow stock from each other, and so on." I said "That's right"; we entered into an agreement where I could borrow from him if I needed any, which I never did, and he could borrow from me, and I says "That is correct" and he says "There is no reason, then, why we can't put that in writing"; and I says "I can't see no reason why we can't put it in writing"; and that agreement was entered into at the time the Lucky Friday Extension Mining Company was incorporated.

(Testimony of Joseph V. Grismer.)

Q. You mean your verbal agreement?

A. Verbal agreement, yes.

Q. That was an agreement and understanding between you as to the use of each other's stock, loaning stock from one to the other?

A. That's right, and when these agreements were handed me there were four of them, I noticed—

Q. Speak up, Mr. Grismer. [383]

A. —there were four sheets, and I read the one, the top one, which was dated September 1, 1945, relative to the exchange of stock of the Lucky Friday Extension. I turned it over and read the other one, and it was the same, and I just glanced at the others, and they all looked alike, I took for granted they were all four the same, and I'm so used to signing things in triplicate and so forth I never paid any attention there was more than one, figured, well, a man typing will make three or four duplicates at one time, so after reading the first two and seeing they were all alike, I signed them all. It was in the early part of this year, in going over them, I discovered that one of them was relating to the Pilot, which was not my intention.

Q. Now, this pencilled notation appears at the top of each agreement, exhibit 67 and 67-a, "1948"; who put that on?

A. I put that on; I put it on myself.

Q. That was so that you would recall when the agreements were actually entered into?

A. That's right.

(Testimony of Joseph V. Grismer.)

Mr. Stocking: We'll offer 67 and 67-a in evidence at this time.

Mr. Etter: No objection.

The Court: Exhibits 67 and 67-a are offered, no objection, they're admitted.

(Whereupon, Plaintiff's Exhibits No. 67 and 67-a for identification [384] were admitted in evidence.)

(Whereupon, Mr. Stocking read Plaintiff's Exhibits 67 and 67-a to the jury.)

Q. Now, Mr. Grismer, did you get the stocks that are mentioned in these agreements?

A. I got some stock in all of them.

Q. In all of these companies? A. Yes.

Q. Do you recall when you got that stock?

A. No, I don't. It came at various times.

Q. And who did it come from?

A. Mr. Allen.

Q. Was any of that stock that you got from Mr. Allen turned over to your partners? A. No.

Q. They didn't get any of this stock?

A. No.

Q. Did they get any stock which came from Mr. Allen? A. They got some, yes.

Q. Do you recall what company that was in?

A. I know they have some, all of them have some in Coeur d'Alene Consolidated.

Q. Alma?

A. And some in Alma, and I think in Hunter Silver.

(Testimony of Joseph V. Grismer.)

Q. And who made that arrangement with them?

A. Mr. Allen; that is, I made them for Mr. Allen.

Q. You made the arrangements with your partners for Mr. Allen? A. For Mr. Allen.

Q. Well, was that the reason that the stock in either Extension or Pilot—or the Pilot, the stock in the Pilot, was turned over to—I mean went out of your possession?

A. Oh, no, none of that. That was their private stock.

Q. What consideration was there for the giving of this stock to your partners of the Consolidated, and the Alma stock?

A. They were to get \$500.00 apiece, and to give up I think it was 25,000 shares, and one of them gave up 50,000, I think, of Pilot in exchange for this stock and \$500.00, of course.

Q. And the Pilot stock then went to Mr. Allen?

A. It wasn't my intention at the time, but later on it did go.

Q. What was your intention at the time?

A. At that time the treasury was mighty short, and in a conversation I was under—I don't know whether it was my misunderstanding, and I think it was, but I thought the stock was to go back into the treasury, and that's why I made the deal with my partners, to get stock back into the treasury.

Q. To use it for the benefit of the corporation?

A. For the benefit of the corporation, yes, that

(Testimony of Joseph V. Grismer.)

was my idea, and I informed my partners so. [386]

Q. Now, going back to the Pilot and the public offering of that, it was made approximately when, do you recall?

A. In 1946, I think June, 1946.

Q. The first part of June it was completed, was it not? A. I believe so.

Q. And do you recall how much that netted your company, the Pilot Company?

A. It was supposed to net the Pilot \$100,000, but \$5,000 of this was to go toward the payment of the Cincinnati group, part payment.

Q. Yes, that was mentioned in the prospectus.

A. Yes, that was mentioned in the prospectus.

Q. And when did you start any operations, mining operations, on the Pilot?

A. In August, 1946.

Q. And who was in charge of those operations?

A. I was.

Q. What did you do?

A. We cleaned out the tunnel and rented a compressor, and bought machines and different supplies, and ran about almost 200 feet of drift.

The Court: Did you say this started in September, 1946? A. August, 1946.

Q. And how long, or during what months, were those operations [387] carried on?

A. About half of August, September, October, November, and part of December.

Q. And why did the work cease in December of 1946?

(Testimony of Joseph V. Grismer.)

A. The bills weren't being paid, and I tried hard to get things straightened up, and couldn't get nowhere, so I just shut down.

Q. They ran out of money?

A. Money, yes.

Q. How much money did you estimate had actually been expended by you on your mining operations?

A. In the neighborhood of \$10,000.

Q. It did not exceed that sum very much, if any? A. Not very much, no.

Q. Did you have any discussions then with Mr. Keane and Mr. Allen about what had happened to the money?

A. I had quite a few discussions with Mr. Keane, because he was the one who was handling the money.

Q. And did he make any explanations to you?

A. I never could get any explanations; it was always a run-around.

Q. And did Mr. Allen—did you have any discussions with him about what had happened to the money?

A. Yes, I would advise with him and talk things over, and he seemed to be at a loss as to why the bills weren't [388] being paid.

Q. And he made no other explanation about what had happened to the money? A. No.

Q. I did want to bring out, Mr. Grismer, what has your education consisted of, what schooling have you had?

(Testimony of Joseph V. Grismer.)

A. I went through the eighth grade.

Q. And how long ago was that?

A. Oh, about 1912 or 1913 I finished school, quit school, rather.

Q. And you've worked around in the mining communities since that time?

A. I started out as a logger in Minnesota first, and then drifted west and went into mining, been in it ever since.

Q. You're married? A. I am.

Q. Have any children? A. Two boys.

Q. How old are they?

A. The oldest will be 22 next July; the youngest was 18 yesterday.

Q. I'll show you what has been marked for identification Plaintiff's Exhibit 50, the group of Lucky Friday Extension Mining Company certificates. You were president of Extension, and will you examine these certificates and [389] state whether or not the "J. V. Grismer, President" is your signature on all of these certificates, that appears on the lower right hand corner, with the exception, I believe, of the last certificate, 4505?

A. I'm confident they're all my signatures; as far as I've seen all of these, I'm quite sure they would be.

Q. And whose signature appears on certificate 4505?

A. James A. Allen as president, William Mullen as secretary.

(Testimony of Joseph V. Grismer.)

Q. Were you also an officer of the corporation at that time, the date of that certificate, October 9, 1947? A. Yes, I was a director.

Q. Were you vice president?

A. I believe so, yes.

Mr. Stocking: I don't believe I've offered this batch of certificates in evidence, and I would like to do so at this time, make an offer of Exhibit 50. These are a portion of the Lucky Friday Extension Mining Company cancelled certificates.

Mr. Etter: I'll object to the introduction of the exhibit at this time on the usual and oft-repeated grounds.

The Court: All right, you may refer to the objections you've made previously.

Mr. Etter: The previous objections, your Honor.

The Court: I'm going to reserve ruling as to this group of certificates. I'm not at all satisfied that all [390] of them are material or admissible.

Q. (By Mr. Stocking): I'll hand you from Exhibit 29, certificates running from 1507 through 1702, but not inclusive—

The Court: What exhibit is this?

Q. This is from Exhibit 29; and ask you if you can identify the—these are of the Pilot Silver Lead Mines, Inc., and ask you if you can identify the—

The Court: Which one?

Q. Pilot, the first numbered certificates being 1507, 1511, 1512, 1532, '34, '37, 1548 and '49; can you identify the signature which appears on there as president of the Pilot?

(Testimony of Joseph V. Grismer.)

A. Well, I wouldn't qualify as a handwriting expert—

Q. Do you know that signature?

A. —but I offhand would certainly say it was Mr. Allen's signature.

Q. Well, you were an officer of the company at that time, August 13, 1947, and through September 8, 1947, the period over which these certificates were issued, these particular ones?

A. I'm sure I was an officer, yes.

Q. You were vice president and a director?

A. Yes.

Q. Now, with regard to the certificates of the Pilot from 1552 through 1702, of these cancelled certificates which [391] are part of Exhibit 29, I'll ask you if that is your signature which appears as vice president on these certificates?

The Court: What certificate numbers are these?

Q. (By Mr. Stocking): 1552 through 1702, but not inclusive. They're numbered consecutively, but of course these are just the cancelled certificates. Does that appear to be your signature?

A. Yes, that appears—in fact, I'm confident it is.

Q. Now, referring to Plaintiff's proposed Exhibit number 39 which was identified as an escrow agreement in which the Coeur d'Alene Mines Corporation and the Coeur d'Alene Consolidated Silver-Lead Mines, Inc., had entered, can you identify your signature, the signature "J. V. Grismer" as secretary of that corporation? A. Yes.

(Testimony of Joseph V. Grismer.)

Q. And can you identify the signature of the president of the Coeur d'Alene Consolidated Silver-Lead Mines, Inc.? A. Yes, I saw him sign it.

Q. And who was that? A. Mr. Allen.

Q. J. A. Allen. Was that signed—

The Court: As president?

Q. As president of the Coeur d'Alene Consolidated Silver-Lead Mines, Inc. Now, was that signed on the date indicated [392] here, May 23, 1946?

A. I couldn't testify as to the exact date. If that's the date on there, it no doubt is.

Q. Was that signed on the same date that this cashier's check was issued, would that refresh your recollection?

A. I don't know; I had nothing to do with the issuing of the check.

Q. You had nothing to do with the committing of the money or the issuance of the check?

A. No.

Q. Who requested you to sign this agreement?

A. Mr. Allen.

Q. You knew that they were raising \$25,000 so they could enter into this escrow agreement with the Coeur d'Alene Consolidated?

A. Yes, I had an idea of it.

Q. Had you discussed that with Mr. Allen and Mr. Keane? A. No.

Q. Not the raising of the money? A. No.

Q. You knew what it was being raised for?

A. I knew we had to put down an amount, similar to a guarantee.

(Testimony of Joseph V. Grismer.)

Q. And that was for what purpose?

A. For entering into an agreement with the Coeur d'Alene [393] Mining Company.

Q. And what were they to do for the \$25,000?

A. Start driving a long cross cut.

Q. For the Coeur d'Alene Consolidated?

A. For the Coeur d'Alene Consolidated, on the 2800 foot level of the Coeur d'Alene Mines.

Q. And were you asked to put up any of the money for this \$25,000?

A. No, I wouldn't have it.

Q. Did you hear any discussions as to where that money was to come from?

A. None whatsoever.

Q. Did you have any knowledge that \$20,000 of that money came from the proceeds of the Pilot offering to the public?

A. I had no knowledge of it whatsoever.

Q. If anybody—whoever knew that fact did not advise you? A. Definitely not.

Mr. Stocking: I would like to renew my offer of this exhibit number 39 at this time, if your Honor please.

Mr. Etter: I make the same objection as previously made.

The Court: Your objection is reiterated?

Mr. Etter: Yes, it's reiterated; it's not been shown to be connected up yet either. [394]

The Court: The ruling is re-reserved.

Mr. Stocking: Well, I wasn't sure whether that was one where you had reserved the ruling.

(Testimony of Joseph V. Grismer.)

The Court: Well, if I haven't reserved it, it is reserved now.

\* \* \*

(Whereupon, at 4:30 o'clock P.M. the Court took a recess in this cause until Thursday, June 9, 1949, at 10 o'clock A.M.) [395]

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(Whereupon, at 4:36 o'clock P.M. the Court took a recess in this cause until Thursday, June 9, 1949, at 10 o'clock A.M.)

Spokane, Washington, Thursday, June 9, 1949,  
10 o'Clock A.M. (Fourth day of trial.)

(All parties present as before, and the trial was resumed.)

\* \* \*

[396]

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: Mr. Grismer was on the stand, as I remember it. He may resume the stand.

### JOSEPH V. GRISMER

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

#### Direct Examination (Continued)

By Mr. Stocking:

Q. Mr. Grismer, what compensation did you get from Extension and Pilot?

A. I got \$150.00 a month from the Extension,

(Testimony of Joseph V. Grismer.)

and I was supposed to get \$200.00 a month from the Pilot.

Q. Who made the arrangements as to what your compensation should be?

A. Mr. Allen told me that that's what it would be.

Q. Now, with respect to the \$150.00 a month for Extension, was that a full time employment you had in overseeing this work that was being done by the Big Friday, or was that part time?

A. It was part time. I was also employed by the Callahan [398] Consolidated, and I would take care of this in the evenings or at night.

Q. And you received that \$150.00 a month for approximately how many months, would you estimate?

A. It totalled approximately \$2800.00 over a period of years.

Q. From the Extension?

A. From the Extension, yes.

Q. And what about the Pilot?

A. I never received anything.

Q. You weren't paid your \$200.00 a month salary that had been arranged for?

A. No, I was not.

Q. Are you familiar with the Montana Leasing Company? A. I know of it.

Q. Have you ever been to the mining property of that company? A. Quite often.

Q. Where is that?

(Testimony of Joseph V. Grismer.)

A. It is at Neihart, Montana.

Q. And how did you happen to go to that property?

A. I would go at the request of Mr. Allen, to examine different things.

Q. Would you come over to the property to check on certain things in connection with mining operations? That's correct.

Q. About how many times did you make trips over to that [399] property?

A. That's quite hard to tell.

Q. Several, or just one or two?

A. Oh, yes, several times.

Q. Do you know what persons were interested in that company, the Montana Leasing Company?

A. It was my understanding it was Mr. Keane and Mr. Allen.

Q. And with regard to the mining operations of that company, do you know who was controlling the mining operations?

A. I took my orders from Mr. Allen.

Q. Did you ever go to the property with Mr. Keane, to your recollection?

A. I was never on the property with Mr. Keane.

Q. And now with regard to your work which was being done on the Pilot and Extension, from whom did you take your orders?

A. Oh, after we got started I issued my own orders.

Q. You were the superintendent of those jobs?

(Testimony of Joseph V. Grismer.)

A. Yes, I was manager of the property of the mine.

Q. After you started mining operations?

A. That's what I mean.

Q. But before that, from whom did you get your directions as to what the plan of operation was going to be?

A. That was worked out between Mr. Lakes and I as to what work should be done. [400]

Q. Yes, and were there any other times that you took any directions from anybody in connection with those companies?

A. Not regarding the work.

Q. Not regarding the work? A. No.

Q. How about regarding other activities in connection with the company?

Mr. Etter: Just a minute; I'm going to object to that question unless it's specific. What does he mean "Other activities in regard to the company"?

Mr. Stocking: Other activities other than regarding the actual development of the mining property.

Mr. Etter: I'm going to object to that as not being specific, and leaving a wide field for conjecture and speculation.

The Court: All right, I'll sustain the objection. You may be specific.

Q. (By Mr. Stocking): Did Mr. Keane give you any specific directions concerning other activities?

(Testimony of Joseph V. Grismer.)

Mr. Etter: I'll object to that question as leading and suggestive.

The Court: I'm in a difficult position. As to the question that was wholly unleading I sustained the objection. Now you must make your choice. The other question had no objection, in no wise was it leading; for [401] it to be specific it has to, to a degree, partake of being leading. I'll sustain either of your objections, but I can't sustain them both.

Mr. Etter: Well, I'll maintain both of them, and take an exception to the second one.

The Court: All right, if you're maintaining both, I'll reverse my original ruling. The witness may answer the general question which was entirely unleading.

Mr. Etter: May we have an exception?

A. (By Witness): Read the question, please.

(Whereupon, the reporter read the question, as follows: "How about regarding other activities in connection with the company"?)

A. I just wouldn't know what you mean by other activities.

Mr. Stocking: I think I followed that question up with another.

(Whereupon, the reporter read counsel's statement as follows: "Other activities other than regarding the actual development of the mining property.")

(Testimony of Joseph V. Grismer.)

Q. From whom did you take instructions?

A. I still wouldn't quite understand what other activities.

Q. Well, you performed functions other than your functions as superintendent of the mine in connection with these corporations, did you not?

A. In regarding the organizing of the company? [402]

Q. Yes. A. Yes.

Q. And under whose direction did you perform those functions?

A. All that was done under Mr. Allen's directions.

Q. And you did perform certain functions in connection with signing papers and as president of Extension, and at whose direction was that duty done?

Mr. Etter: I'd object to that as leading and suggestive likewise.

The Court: Overruled.

Mr. Etter: Exception.

Q. At whose direction was that usually done, then?

A. Any signing of papers was generally under Mr. Keane's direction.

Q. That was usually done under Mr. Keane's direction? A. Yes.

Q. So you took directions, then, from both Mr. Keane and Mr. Allen?

A. Mr. Keane was attorney for the company,

(Testimony of Joseph V. Grismer.)

and he took care of all the legal affairs, and that came under his heading.

Q. Now, there's been some testimony here that certain funds from these companies were issued to the Montana Leasing Company and other concerns. Did you have any knowledge of the fact that the funds of these companies were being issued to Montana Leasing Company and other concerns?

A. I had no knowledge of it.

Q. To your knowledge did you ever get any of these funds—

A. No, I never did.

Q. ——that were so issued?

A. I had no knowledge of any of the financial affairs of the company. I was denied access to all books and records.

Mr. Stocking: That's all.

#### Cross-Examination

By Mr. Etter:

Q. In your direct examination, Mr. Grismer, a question was asked you whether there was any discussion, whether there has ever been any discussion between you and Mr. Stocking or Mr. Erickson with regard to your testifying. I'll ask you, has there ever been any discussion with those gentlemen about your testifying here today or yesterday?

A. I just don't know what you mean by discussion.

Q. Well, did you discuss with them what your testimony was going to be?

(Testimony of Joseph V. Grismer.)

A. Vaguely, yes. They asked me a few questions.

Q. Vaguely. When did you have this discussion with them, Mr. Grismer?

A. Shortly before coming into the courtroom.

Q. Shortly before coming into the courtroom. Did you have any discussion with them prior to or on or about January 12, 1949?

A. It is possible. [404]

Q. It is possible. As a matter of fact, you did have discussion with them, didn't you, Mr. Grismer?

A. I'm quite sure—

Q. You're quite sure that you did?

A. —that we talked things over in a general way.

Q. You came down a couple of times before January 12 and talked things over, isn't that so?

A. I never came down with the express purpose of talking anything.

Q. Prior to January 12 you were a joint defendant, were you not, in all seven counts upon which Mr. Allen is being tried?

A. Yes, I was indicted.

Q. On all seven counts, isn't that correct?

A. I presume.

Q. And on January 12 six counts were dismissed against you, were they not, Mr. Grismer?

A. Yes, sir.

Q. And leaving only one count?

A. That's right.

Q. To which you entered a plea of nolo contendere?

(Testimony of Joseph V. Grismer.)

A. That's right.

Q. Now, was there any discussion between you and Mr. Stocking and Mr. Erickson or any of the other government officials prior to the time these counts were dismissed in respect [405] to what your testimony would be or what your stand would be in the event those counts were dismissed?

A. We went over the general counts, and I proved to them that I was not guilty of these counts.

Q. You proved to them you were not guilty of the first six counts? A. Yes.

Q. So it was on the basis of a conversation—where did you have this conversation, Mr. Grismer?

A. When?

Q. Where you proved that you weren't guilty of the first six counts.

A. Did you say when?

Q. Where. A. Right here.

Q. Right here?

A. In the courthouse, in this building.

Q. And whose office was that?

A. I think it was the district attorney's office.

Q. And who was present at that time?

A. My attorney—

Q. That's Mr. Hawkins?

A. That's Mr. Hawkins, and Mr. Stocking, and Mr. Denney I think was there, and Mr. Erickson.

Q. So if I understand correctly what you did on that day, as [406] to count 1, using the mails to defraud, you proved to these gentlemen that you weren't guilty of that? A. I believe so.

(Testimony of Joseph V. Grismer.)

Q. In Mr. Erickson's office? A. Yes.

Q. And as to count 2, using the mails to defraud, you proved to those gentlemen you weren't guilty of that? A. That's the general idea.

Q. Beg your pardon?

A. I say that's the general idea..

Q. That's the general idea, and as to count 3 you proved that you were not guilty of count 3, using the mails to defraud? A. Yes, sir.

Q. And you proved that you were not guilty of count 4, which was a charge of fraud in the sale of a security? A. That's right.

Q. And likewise of count 5, fraud in the sale of a security, you proved that you were not guilty of that count? A. I suppose so.

Q. And count 6, you proved that you were not guilty of that count? A. That's right.

Q. Now, as to count 7, couldn't you prove that you weren't guilty of conspiracy, Mr. Grismer?

A. I thought I proved it to my satisfaction, but they didn't [407] see it that way.

Q. They didn't see it that way. They said then they would dismiss the six counts, after you proved you were not guilty of the six counts?

A. They held me on that count.

Q. And up until that time had you testified or given any information that you have given here this morning? A. Sir?

Q. Up until that time had you told any govern-

(Testimony of Joseph V. Grismer.)

ment official or anybody else what you've testified here this morning?

A. Well, it's still free speech, and I suppose I've talked it over.

Q. —and yesterday.

A. Oh, government officials—

The Court: Just a moment; you may read the entire question again.

(Whereupon, the reporter read the question as follows: "Up until that time had you told any government official or anybody else what you've testified here this morning and yesterday?")

A. I never made any particular effort to talk to any government official, and I don't think it was ever discussed in this light, but as far as anybody else, I will frankly admit that I've often talked things over with my friends.

Q. On January 12, or about that time, though, you did discuss [408] with the government, in your attempts to prove that you were not guilty, as you say here, you did discuss this testimony that you've given here yesterday and today?

A. I don't know whether I discussed the testimony as such; I merely explained my position.

Q. You explained your position?

A. That's right.

Q. You had not explained that position before that time? A. Not to the government officials.

Q. That's right. Weren't you subpoenaed before

(Testimony of Joseph V. Grismer.)

some administrative hearings of the Securities and Exchange Commission long prior to the return of this indictment?

A. I wish to retract that last answer. I said not to the government officials. By that I meant it wasn't necessary, I was not indicted.

Q. That's right.

A. And I hadn't expressed it to anyone during the indictment.

Q. Now I'll repeat the question, Mr. Grismer: Did you testify about this matter before an administrative hearing of the Securities and Exchange Commission long before this indictment was returned?

A. I was called before the Securities and Exchange Commission, yes.

Q. Yes, and you were placed under oath, were you not? A. I was placed under oath. [409]

Q. And you were asked substantially the same questions as you've been asked here today?

A. In a general line, yes.

Q. Did you answer those questions the same as you've answered them here in court yesterday and today?

A. I tried to answer all truthfully, to the best of my knowledge.

Q. Did you answer them the same as you've answered them here, Mr. Grismer?

A. That I couldn't tell.

Q. Well, as a matter of fact isn't it true that

(Testimony of Joseph V. Grismer.)  
you did not answer them the same as you have  
here yesterday and today?

A. That's easy to use different grammar.

Q. Well, we'll go to some specific questions here.  
You stated in your direct testimony, Mr. Grismer,  
the other day, that you went to the Samuels Hotel,  
and you said this: "Mr. Allen then took me aside  
and said that they had decided to develop that piece  
of ground, or to promote a company on it, words  
to that effect which I can't recall, and that they  
had agreed that they would develop it through the  
Lucky Friday." Did you tell the Securities and  
Exchange Commission, did you give them that in-  
formation at the hearing at which you were sub-  
poenaed long prior to the time this indictment was  
returned against you?

A. Did I tell them that? [410]

Q. Yes.

A. I don't believe I was even asked that.

Q. You weren't asked that, so you didn't tell  
them that?

A. I answered what I was asked.

Q. What were you asked at that hearing?

A. Oh, my gosh, I was asked a multitude of  
questions; I can't recall them.

Q. Can you recall any of them?

A. I wouldn't know, there was so many of them.

Q. Weren't you asked this question, in substance  
and effect, weren't you asked whether or not Mr.  
Allen promoted the Lucky Friday Extension;

(Testimony of Joseph V. Grismer.)

weren't you asked that question in substance and effect, maybe over a period of two or three questions?

A. I know I was asked whether Mr. Allen was a promoter.

Q. That's correct.

A. My answer was, I said no, if he was a promoter his name would have appeared in the prospectus. That was the limit of my knowledge of the examination.

Q. That was the limit of your knowledge?

A. As to the legal aspect of it.

Q. The legal aspect of it?

A. I figured if a man was a promoter his name would have to appear on that, and if it did not appear—

Q. You told these people he wasn't a promoter, didn't you— [411] A. I did.

Q. —aside from the prospectus?

A. I just told you I believed his name would have to be on the prospectus to be a promoter. That was the limit of my knowledge at that time.

Q. Now, you stated here yesterday: "I was informed by Mr. Allen that that would be the name of it", referring to the Lucky Friday Extension.

A. That's right.

Q. Did you tell the Securities and Exchange Commission that?

A. I don't believe I was asked that.

Q. You don't believe you were asked that?

(Testimony of Joseph V. Grismer.)

A. No.

Q. You made this statement yesterday: "I thought at the time that Mr. Sekulic had owned the property."— A. That's right.

Q. ——"After a few days it was brought to my attention that he did not own the property, and Mr. Allen told me that Mr. Lakes was to come in and that he and I would locate the property in my name". Did you tell the Securities and Exchange Commission that, Mr. Grismer?

A. I don't believe it was asked.

Q. You don't believe it was asked?

A. No.

Q. You stated here yesterday: "I was told that all the stock [412] would be issued to me for the property, and that I would then turn the stock back to the corporation, after endorsing all the certificates, which I did. Question: And who told you that? Answer: Mr. Allen." Did you tell the Securities and Exchange Commission at your hearing at which you were subpoenaed, did you tell them that, or give them that information?

A. If they asked me, they got that information.

Q. Well, don't you recall?

A. I don't recall.

Q. You don't recall. You stated here yesterday: "I was told that Mr. Keane would be the company's attorney and take care of all the financial affairs of the company. Question: And who told you that? Answer: Mr. Allen." Did you tell the Securi-

(Testimony of Joseph V. Grismer.)

ties and Exchange Commission that, Mr. Grismer, when you were subpoenaed before them well before this indictment was returned?

A. If they asked me, they got the same answer.

Q. Well, do you remember anything you told them at all?

A. Oh, I can remember quite a few things.

Q. All right, what did you tell them, then?

A. May I make a statement first?

Q. Just tell us the things you remember that you told them.

A. I was under a handicap there.

Q. All right. [413]

A. May I tell you what it is?

Q. No.

Mr. Stocking: I think the witness has a right to explain that.

The Court: Well, not at this time. There is redirect. He may answer the question as put.

A. What's the question?

(Whereupon, the reporter read the question, as follows: "Just tell us the things you remember that you told them.")

A. Well, the main thing that stands out in my mind is regarding Mr. Allen being a promoter. I distinctly remember saying no, he was not, because had he have been a promoter his name would have appeared on that prospectus, and as I said before, that was the limit of my knowledge regarding the

(Testimony of Joseph V. Grismer.)

legal aspects of it, and so I figured he was not a promoter, and I stuck to that idea, and it was mighty hard for me to do any answer to these questions, because Mr. Allen had me in the office prior to entering the office of the Securities and Exchange Commission; Mr. Mullen was there; he particularly emphasized that his name was not to be mentioned at this hearing, that he had absolutely nothing whatsoever to do with it, and don't never mention my name, but I did, and that was still ringing in my ears. I'm telling you it's pretty hard to [414] testify when a friend tells you these things, and you don't want to get your friend in bad, and still tell the truth, and I stuck to the truth all the way through as I know it.

Q. You stuck to the truth where?

A. During the hearing.

Q. During the Securities and Exchange Commission hearing? A. As I know it.

Q. So if Mr. Allen told you what you said, you didn't pay any attention to it anyway?

A. I tried to disregard Mr. Allen's story.

Q. And you told the truth, is that so?

A. As much as I know.

Q. As a matter of fact, wasn't the whole purpose of your examination at the Securities and Exchange Commission with reference to the connection if any between Mr. Keane and Mr. Allen, wasn't that the whole purpose of the inquiry directed to you?

(Testimony of Joseph V. Grismer.)

A. I wouldn't know what the purpose was; I can't read their minds.

Q. Didn't the commission ask you, as a matter of fact, if Mr. Keane and Mr. Allen weren't the promoters of these properties?

A. They perhaps did; I wouldn't know for sure.

Q. And what did you say, "no"? [415]

A. I wouldn't know for sure.

Q. And what did you say when they asked if Mr. Allen went out and acquired these properties?

A. I wouldn't know.

Q. All you can recall is that they asked you whether or not Mr. Allen was a promoter, is that so?

A. That's the main outstanding factor in my mind.

Q. You don't remember anything else about it?

A. Oh, if anything was brought up I could recall.

Q. All right, you testified here as follows yesterday: "We owned the eight claims, patented now, and we held on for a good many years; there was a great deal of work done, and a mighty good showing. When this war came along my partners decided that it was time that we organized and developed the ground, and I was talking about organizing the Pilot Company, and so forth, and I talked it over with Mr. Allen, and he then made the statement that it would take us a great deal of time and money to organize and raise the money to do the

(Testimony of Joseph V. Grismer.)

work, while he says "We can do it in a few weeks." Did you tell that to the commission when you testified here over a year, probably, or sometime prior to the return of this indictment?

A. I don't believe I was asked that.

Q. You don't think you were asked that. You stated here as follows, yesterday: "It was to be on the same scale and [416] plan and the same organization that took the Extension, meaning Mr. Keane and I presume Mr. Allen was to participate all the way through like they had in the Extension. We organized the Pilot Mining Company, and"—did you tell that to the commission when you testified under subpoena prior to the time this indictment was returned, Mr. Grismer?

A. I do not believe I was asked that.

Q. You stated here "I told Mr. Allen that that would be a desirable group to have in there to make a good compact group of mining claims. Question: Did they lay next to the properties that you were putting in? Answer: They adjoined it. Question: Yes. Answer: And Mr. Allen told me to see Mr. Herrick." Did Mr. Allen tell you to see Mr. Herrick?

A. Yes, at that time.

Q. Did you tell the commission that, prior to the return of this indictment?

A. If they asked me, that would be the answer they got.

Q. Do you remember whether you did or not?

A. I do not remember.

(Testimony of Joseph V. Grismer.)

Q. "Question: And you went there at Allen's direction? Answer: Yes." You testified that yesterday?

A. Yes.

Q. Did you tell the commission that?

A. If they asked me they got that answer. [417]

Q. If they asked you they got that answer?

A. Yes.

Q. Here was a question addressed to you, Mr. Grismer, yesterday: "Do you know Mrs. Emeline Phelan?" Answer: Mrs. Phelan, yes, the Phelan Group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." Will you tell us why you answered that way?

A. I don't quite understand.

Q. The question was "Do you know Mrs. Emeline Phelan". The answer was "Mrs. Phelan, yes, the Phelan group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." Why did you answer that particular question that way yesterday?

A. I don't know how else it should have been answered.

Q. Well, didn't Mr. Stocking merely ask you "Do you know Mrs. Emeline Phelan"? Couldn't you have said yes or no?

A. You're right.

Q. You could have said yes or no?

A. I could have, yes.

Q. But you said "Mrs. Phelan, yes, the Phelan

(Testimony of Joseph V. Grismer.)

group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over to Mr. Allen." You wanted to be sure to get Mr. Allen in there, didn't [418] you, Mr. Grismer?

A. I'll tell you why I answered it that way.

Q. All right.

A. Prior to that question, Mr. Stocking asked regarding the accumulation of surrounding properties, and it was in answer to that question, and taking the surrounding properties as a whole, I answered it that way.

Q. All right, let's go back a few questions and see if that's so. "Question: And who made the negotiations, as to what arrangements were made with Mr. Herrick? Answer: I started all the negotiations with Mr. Herrick. He was somewhat reluctant to go in, as he had another deal on with some other people, but I kind of talked him out of it, and convinced him that he'd have quicker action with the Pilot, sincerely I thought so, and after he more or less agreed that he would talk business, I turned him over to Mr. Allen. Question: Whatever final arrangements were made were not made by you? Answer: No. Question: They were made by Mr. Allen? Answer: I don't know whether it was Mr. Keane or Mr. Allen. Question: I see. Now, were there some other properties involved? Answer: There was the—I can't recall that. Question: Do you know Mrs. Emeline Phelan? Answer:

(Testimony of Joseph V. Grismer.)

Mrs. Phelan, yes, the Phelan group, they call it. I went to see her too, and started negotiations, and reached an agreement, and turned her over [419] to Mr. Allen."

A. What about that?

Q. That's what I'm asking you; "and turned her over to Mr. Allen". Did he ask you that at all?

A. But prior to—

Q. Did he ask you anything about Mr. Allen in that question? A. No, he didn't.

Q. As a matter of fact, you had discussed that particular part of your testimony with all of counsel before you came in here, hadn't you?

A. Discussed it right here.

Q. And before you came in to testify yesterday?

A. He said, "We'll now talk about the surrounding properties you're taking", in other words, to that effect, and it's that I was working on.

Q. Mr. Grismer, did you discuss that with counsel before you testified yesterday, these answers?

A. I did. They were aware of it.

Q. Now, you made this statement yesterday: "All this stock was brought to me, all these certificates, and it was insisted that I endorse them all before they went into escrow. Question: Who insisted that you endorse them?"

Answer: Mr. Allen."

A. That is correct.

Q. That's correct? Did you tell the Securities and Exchange [420] Commission, did you give them

(Testimony of Joseph V. Grismer.)

that information or answer any question with respect to that subject matter when you testified before the Commission under subpoena sometime, a long time, I'll say, prior to the return of this indictment?

A. I'm quite sure they never asked me that, so I never.

Q. You're quite sure they never asked you that?

A. No.

Q. Now, a question yesterday: "Has that all disappeared? Answer: I loaned Mr. Allen 100,000 shares, and 300,000 shares disappeared, leaving me 75,000." You recall that yesterday? A. Yes.

Q. Did you tell the Commission about that when you were testifying under subpoena sometime prior to the return of this indictment?

A. As I stated before, I didn't want to mention Mr. Allen any more than necessary.

Q. Mr. Grismer, I'll ask you if you gave that information to the Commission, yes or no, if you remember? A. I couldn't recall.

Q. You couldn't recall? A. No.

Q. You said this the other day: "Question: Now, in connection with the Pilot, I think you mentioned previously that you had at one time visited Elmer Johnston's office, was that [421] your testimony? Answer: Yes, I did visit Elmer Johnston's office regarding the prospectus of the Pilot. Question: Who, if anyone, accompanied you there? Answer: I am quite sure that Mr. Allen was with

(Testimony of Joseph V. Grismer.)

me." Did you mention that at all, Mr. Grismer, to the Commission when you were testifying under subpoena sometime prior to the return of this indictment?

A. I wouldn't know. I don't think they asked me.

Q. You testified as follows yesterday: "I was in Mr. Allen's office, and we were talking things over in general, and he said "You know" he said "we made agreements, verbal agreements, whereby we could borrow stock from each other, and so on". I said "That's right". We entered into an agreement where I could borrow from him if I needed any, which I never did, and he could borrow from me, and I says "That is correct" and he says "There is no reason, then, why we can't put that in writing", and I says "I can't see no reason why we can't put it in writing" and that agreement was entered into at the time the Lucky Friday Extension Mining Company was incorporated." Do you remember testifying to that the other day?

A. Yes.

Q. Did you tell the Commission, at their hearing sometime prior to the return of this indictment, did you give them that information? [422]

A. Not prior to the indictment, no.

Q. Well, did you give them that information at the hearing where you were subpoenaed to testify before the Commission?

A. I'm quite sure not.

(Testimony of Joseph V. Grismer.)

Q. You're quite sure not?

A. Because at that time, why, it wasn't even in writing.

Q. Did you have this oral agreement at the time you said here it was entered into, at the time the Lucky Friday Extension was incorporated? That was in 1945, wasn't it? A. 1945.

Q. And you had the oral agreement then?

A. That's right.

Q. Now, you testified before the Commission in what, 1947? A. That's right.

Q. Did you tell them at that time about this information?

A. I'm quite sure I did; I told them we borrowed from each other, and loaned, and so forth.

Q. As a matter of fact, didn't you tell them you borrowed and loaned stock back and forth, and that was the only arrangement Mr. Allen ever had with your company, isn't that what you told the Commission, that the only arrangements Mr. Allen had were with you personally, you loaned him stock and he loaned you stock, and that he didn't have anything else to do with the company?

A. Oh, no, I couldn't do that; that would be perjury. [423]

Q. Yes, I know, but did you tell them that?

A. Oh, no, of course not.

Q. Mr. Grismer, when did you first meet Mr. Allen?

A. I don't recall whether it was '37 or 1938.

(Testimony of Joseph V. Grismer.)

Q. And what was the circumstance of the meeting you had with Mr. Allen?

A. I think I was introduced to Mr. Allen by Mr. Howarth.

Q. Mr. Howarth? A. Howarth, yes.

Q. Who was a broker?

A. A broker at the time.

Q. Mr. Allen was then associated with Callahan Consolidated?

A. He was interested in that, yes.

Q. That's right, and weren't you—what was the purpose in your meeting, if you had one, at that time?

A. I just completed a contract for the shaft at the Coeur d'Alene Mines, and was temporarily out of work awaiting another contract when Mr. Howarth approached me on whether I would take charge of the Callahan Consolidated. I told him I would entertain the idea, and he introduced me to Mr. Allen, and that was the beginning of our association.

Q. And you and Mr. Allen worked out a deal, didn't you, where you were going to do some tunnel work? A. Yes.

Q. And you did get that job or that contract, whatever it was? [424]

A. I took the job or contract, more or less, yes.

Q. Through Mr. Allen?

A. I believe so, yes.

(Testimony of Joseph V. Grismer.)

Q. Then you became, did you not, quite closely associated with Callahan and with Mr. Allen?

A. I've known Mr. Callahan for a long time.

Q. Yes, but you came to be quite closely associated with the company? A. Oh, yes.

Q. As a matter of fact, didn't you have a position with the Callahan Consolidated then for many years? A. I did.

Q. Beg your pardon? A. I did.

Q. And what was your official position?

A. Mine superintendent.

Q. And you and Mr. Callahan and Mr. Allen all worked quite closely together, didn't you, Mr. Grismer?

A. As long as Mr. Allen was in the association, yes.

Q. And likewise you and Mr. Allen worked closely together on other mining matters after his disassociation from Callahan, isn't that true?

A. Yes, you bet.

Q. Isn't it true that you and Mr. Allen over a long period of years have been in different ventures together? [425] A. That is right.

Q. And you have exchanged stocks back and forth, Mr. Allen has traded you and you've traded him?

A. Well, I never borrowed any from him.

Q. I didn't say borrow; did you trade stocks with him at different times?

(Testimony of Joseph V. Grismer.)

A. I got some stocks in payment of different stocks he borrowed off of me, in part payment.

Q. That's right, you gave him certain stocks and he borrowed some?

A. I never gave him; he simply took.

Q. He borrowed some?

A. He borrowed some, yes.

Q. And you've received stocks from him?

A. I've received some, yes.

Q. And the Lucky Friday Extension, when that was first started isn't it a fact that you went to Mr. Allen and asked Mr. Allen to help you personally in the matter? A. Personally?

Q. Yes, to ask him his advice; didn't you go to Mr. Allen?

A. Not to my knowledge. I'm a shaft man; I know my business.

Q. Didn't you go to Mr. Allen and ask him about helping you with certain administrative and organizational problems of Lucky Friday Extension?

A. Lucky Friday Extension? [426]

Q. Yes. A. Oh, no.

Q. You didn't?

A. You mean to start the company?

Q. Yes. A. Why, no.

Q. Was it proposed to you, then, first? Did somebody propose it to you first?

A. It was what you might say broadcasted.

Q. It was broadcasted. Now, this meeting, this

(Testimony of Joseph V. Grismer.)

first meeting that you talk about in Pat's Cafe, is that the place you're talking about?

A. That's right.

Q. Now, who was there besides you and Mr. Sekulic and Mr. Allen? Was Mr. Keane there?

A. He was there.

Q. Mr. Halin, of Spokane, was he there?

A. No, I don't believe he was.

Q. Are you sure that he wasn't?

A. I'm quite sure.

Q. And who else was there, if you remember?

A. Bob McDonald was there.

Q. Was Mr. Horning there?

A. No, he was not.

Q. Who else, if you recall? [427]

A. Well, there was quite a few, not very many, but I don't quite recall who else; I know there were two soldiers there.

Q. Isn't it a fact Mr. Sekulic proposed the organization of this company?

A. He proposed the development of that particular piece of ground.

Q. He proposed the development of that particular piece of ground?

A. He was the first one to approach it.

Q. He was the first one to propose it?

A. Yes.

Q. And how did he propose that he organize the company? Did he say anything about how much money each of the people present would contribute?

(Testimony of Joseph V. Grismer.)

A. That was never discussed in my presence.

Q. Do you recall whether or not he said "Let's all put in \$500.00 and get this company going"?

A. I recall someone making that statement, that we can get \$500.00 here, and \$500.00 there, and so forth.

Q. Didn't Mr. Sekulic say "I'll put in \$500.00"?

A. I don't recall him saying it; undoubtedly he would.

Q. Didn't a couple of other people say—

A. If they did I didn't hear it.

Q. And as a matter of fact, didn't Mr. Allen say "I'm not [428] interested, I'm not going to put any in"?

A. I don't know, but I remember him going to the 'phone and calling Kenny.

Q. Kenny Egan?

A. Egan, in Montana, and—

Q. And then coming back and saying "I'm not interested"?

A. No; as a matter of fact he said "I have \$500.00".

Q. Didn't Mr. Halin say "I'm not interested either"?

A. Mr. Halin was reluctant to go in.

Q. But you say Mr. Allen, the defendant, wasn't reluctant?

A. This was the following day, what we're talking about now, not in Pat's Bar.

(Testimony of Joseph V. Grismer.)

Q. All right, let's go to the following day. Who were present at that time?

A. I don't recall; there was a big crowd in the Metals Bar.

Q. Mr. Halin?

A. I think he was present the second day.

Q. You were present?

A. Partly, after shift.

Q. Mr. Keane? A. Mr. Keane.

Q. Mr. Sekulic?

A. I don't believe Mr. Sekulic was there the next day.

Q. Mr. Allen? A. Yes. [429]

Q. Mr. Horning? A. I wouldn't recall.

Q. Mr. McDonald?

A. Yes, it was in his place that we were.

Q. What did Mr. Sekulic say at that time about the financial condition of the Lucky Friday, commonly called the Big Friday? Did he say anything about it?

A. Not in my presence it was never discussed.

Q. Do you know what the financial condition of the Big Friday was at that time?

A. No. I didn't think it was very bright, of course.

Q. And Mr. Sekulic of course was president of the Big Friday, wasn't he?

A. Whether he was at that time I don't know.

Q. If he wasn't president he had a large interest in it, didn't he? A. Yes.

(Testimony of Joseph V. Grismer.)

Q. And still has? A. I presume so.

Q. And has been connected with it for many, many years? A. Yes.

Q. And don't you recall he said something about the financial condition of the company not being too good at that time?

A. Not to my knowledge, in my presence.

Q. But he proposed, did he not, this proposition of working [430] the Lucky Friday Extension, which was adjacent to the Lucky Friday, through a tunnel that would be driven across to the Extension Ground from the Big Friday or Lucky Friday main—what do you call it—tunnel?

A. Shaft.

Q. Yes, excuse me.

A. Not in my presence.

Q. Didn't say it in your presence?

A. No.

Q. All right. Well, then, when was the first time, Mr. Grismer, that you knew much about what was going to be done with this ground?

A. That evening when I came home from work.

Q. When you came home from work?

A. Yes.

Q. And you went into the Samuels Hotel and in the Metals Club there? A. Yes.

Q. And you say Mr. Allen talked to you at that time? A. That's right.

Q. And told you they were going to go through with that deal?

(Testimony of Joseph V. Grismer.)

A. They were going to develop the property or promote, I don't know which words he used.

Q. You had a number of claims in that, did you not? A. I didn't right in that. [431]

Q. Then what arrangement was made with you about the claims, so-called, that you later acquired?

A. There wasn't anything done that day, and about the following day, I believe it was, when I came off shift, I mean, I was informed by Mr. Allen that Arthur Lakes would be in and that the two of us would go up and survey and relocate the claims.

Q. And you did that? A. We did that.

Q. And you surveyed and relocated them in whose name? A. In my name.

Q. And after that what did you do? Did you transfer them over to the Lucky Friday Extension?

A. That was the general idea, yes.

Q. For this large block of stock? A. Yes.

Q. Now, at the time that the organization of that company was proceeding, Mr. Grismer, did you know anything about a proposed plan of the Lucky Friday Extension to finance the approach to the Lucky Friday Extension from the Lucky Friday? Did you know about a proposed financial arrangement at that time?

A. I didn't know anything until the proposal was brought to me in writing.

Q. Well, now, as a matter of fact—— [432]

A. I might have heard vague rumors.

Q. ——matter of fact, wasn't it understood that

(Testimony of Joseph V. Grismer.)

when you went out and located those claims, that you would transfer some of them over to the Big Friday or the Lucky Friday, wasn't that the understanding?

A. Not my understanding.

Q. It wasn't your understanding? A. No.

Q. What was your understanding?

A. I was just to locate the claims.

Q. You didn't know any of them were to be transferred over to the Lucky Friday?

A. Not until I got the contract.

Q. And what did the contract provide just in general on that score? A. It did.

Q. What was it?

A. It provided that we would locate two claims, it mentioned them, adjoining the Lucky Friday which it seems that the Lucky Friday, that's the Big Friday, claimed they owned, and that after located, it was merely to perfect the location, we were to transfer back or deed back to the Lucky Friday I think a one half interest in the claims, or was it all, and receive half the ore, something like that.

Q. You were likewise to advance an undisclosed amount of money [433] for development work in the Big Friday, that was the Lucky Friday, to enable them to come over to the Extension?

A. That was in the contract.

Q. You thought that was a good idea yourself?

A. I refused to sign the contract.

Q. You never did sign it?

(Testimony of Joseph V. Grismer.)

A. I later on did, yes.

Q. And pursuant to that, the Lucky Friday Extension did put considerable money, sixty or seventy thousand dollars, into the development, isn't that right?

A. Subsequently there was a lot of money spent there, yes.

Q. A lot of money spent mining? A. Yes.

Q. And is it your recollection that after this money was spent, the development work done, that the value of the Big Friday stock increased immeasurably? A. Definitely.

Q. It did? A. It certainly did.

Q. Not only increased immeasurably the stock, but the company started to make money?

A. That's right.

Mr. Stocking: We'll object to the cross-examination on the value of the stock of the Big Friday with this witness. [434]

Mr. Etter: I think it's certainly material in following who were the interested parties, whether or not the defendant was a promoter within the purview of the indictment, or other people had an interest. It's entirely competent, your Honor.

The Court: Probably this cross-examination exceeds the right of the defendant, in other words, it's on a subject that was not developed in direct examination, but it must be remembered that this witness was named on the indictment, that he's testified, and there should probably be substantial liberality

(Testimony of Joseph V. Grismer.)  
in the cross-examination. The objection is overruled.

Q. (By Mr. Etter): Any time, Mr. Grismer, isn't it so, since you've been acquainted with Mr. Allen, any time you had a problem that involved administration or bookkeeping or something, you've always come to Mr. Allen and asked him what he'd do, haven't you? A. Often, yes.

Q. You've called him any number of times and asked him for his assistance and help, haven't you?

A. Just in what respect?

Q. On some particular purchase problem of a claim, or something like that?

A. I did talk nearly everything over with him, yes.

Q. That's correct? [435]

A. That is correct.

Q. He didn't come to you, did he, Mr. Grismer?

A. Lots of times.

Q. Yes, about what? For instructions from you on how to buy a claim?

A. Well, about different claims and so forth, because he knew where everything was.

Q. Oh, yes, the information as to claims.

A. Information, yes.

Q. But you came to him any number of times and asked his advice as to administrative matters, purchases, and one thing and another, didn't you, titles and all that sort of thing?

(Testimony of Joseph V. Grismer.)

A. I could have asked him several times; in fact, I'm quite sure.

Q. You as a matter of fact had been dealing or trying to deal with Mr. Herrick, who testified here, you were trying to deal with Mr. Herrick before you ever talked to Mr. Allen about it, weren't you?

A. Oh, no.

Q. Isn't that so? A. No, I did not.

Q. All right, when did you, or when was the first time you talked to Mr. Herrick?

A. I discussed the situation with Mr. Herrick regarding the [436] adjoining ground.

Q. When?

A. Why, during the time or about when the Pilot was being organized or incorporated.

Q. Well, did Mr. Allen discuss with you the Pilot at that time, or did he discuss with you a deep development program through that entire area which would include numerous companies, Lucky Friday, Pilot, Hunter, Homestake and a number of others?

A. We discussed the possibility of eventually getting hold of the Gold Hunter.

Q. Yes, and Allen had discussed with you many times this deep development program, hadn't he?

A. Yes, that would be a deep development program.

Q. Which would have its access through the Gold Hunter? A. That's right.

Q. And Mr. Allen you knew was then in negoti-

(Testimony of Joseph V. Grismer.)

tiations with a man named Murphy in Chicago with reference to the purchase of the Gold Hunter?

A. I believe he was.

Q. And you and Mr. Allen had discussed this deep program for a long time and a number of years?

A. During the time of the organization of the Pilot.

Q. And Mr. Allen's interest was associating all of these various companies into the central development program? [437]

A. That was the interest, yes.

Q. And that included the Extension and the Pilot both?

A. Well, the Extension could not be developed through the Gold Hunter.

Q. But that included the Pilot? A. Yes.

Q. And that was his interest when he discussed with you the matter of the organization of the Pilot, the central development program?

A. Certainly we planned on a deep development; it has to be deep development there.

Q. Of course it does. Now, when Mr. Herrick, when you brought Mr. Herrick up to talk with Mr. Allen, that's what you and Mr. Allen discussed with Mr. Herrick?

A. I never discussed anything with Mr. Herrick in the presence of Mr. Allen.

Q. But you know that's what you and Mr. Allen discussed? A. That's definitely.

No. 12437

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United States  
Court of Appeals  
for the Ninth Circuit.

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JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
In Three Volumes  
Volume II  
(Pages 451 to 900)

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Appeal from the United States District Court,

Eastern District of Washington

Northern Division.

FILED

FEB 21 1950

PAUL P. O'BRIEN,  
CLERK



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(Testimony of Joseph V. Grismer.)

Q. And Mr. Allen never indicated any interest to you at all in the Pilot just as the Pilot, separate from everything else?

A. Well, that was the nucleus of the whole thing.

Q. He indicated the interest of the Pilot as a member of this group in the central development?

A. The interest of the Pilot came first, and then that came [438] afterwards in the possibilities.

Q. But Allen wasn't the big shot in the Pilot, was he?

A. I don't know what you call the big shot.

Q. He wasn't the man that ran things?

A. He did the organizing.

Q. Wasn't Mr. Keane the over-all boss of everything?

A. I couldn't say that; he took care of the legal end.

Q. All right. Do you recall a stockholders' meeting of the Pilot Silver Lead held on August 7, 1948, in the assembly room of the Old National Bank Building, at 7:30 p.m.? A. Yes.

Q. Do you remember being there?

A. Yes, golly yes.

Q. I want to read a statement that you made there and ask you if you made that. "Mr. Grismer: I don't believe I need any introduction to the Pilot because I was the original locator of the Pilot Mine, together with Bill Walker, in 1924. We packed up there the picks and drills and made the property what it is today. We of course were com-

(Testimony of Joseph V. Grismer.)

mon guys and a long way from knowing exactly how to handle things, but we finally ended up in incorporating the Pilot, and you might say promoting it. Very well. A good many people here bought stock on my reputation. I had a good mining reputation at that time. I haven't got quite as good now. Anyway, we turned this over to [439] that Board of Directors, the first Board, with the full intention and hopes that they would—well, figuring they would play fair with everyone. I went on as manager of the property. I am a little ahead of the game. Mr. Bentley cites figures that are supposed to be since October, 1945, to June, 1947. It took so long to get a certain amount of money. The company was not incorporated until January, 1946, and in June, 1946, the company was fully financed. Not a dollar has come in since. A lot of it went out. In August I started operation as manager of the property at a rate supposed to be at \$200.00 a month. September came around. I was not paid. I didn't care a heck of a lot. I thought I would let things run as long as we were going to make a mine out of it, and I found that a lot of bills were not paid. I then tried to enter the office of F. C. Keane, who was president and the whole cheese, you might say, of the Pilot." Did you say that?

A. That was after the incorporation.

Q. "He and his secretary, Glynn D. Evans, were the officers and directors of the Pilot. I couldn't contact Mr. Keane. He was always in the habit of

(Testimony of Joseph V. Grismer.)

running away when I came near and cutting me off: 'Well, I will take care of it tomorrow,' and he called me pretty fancy names now and then, which was quite characteristic of him, and I [440] told him that these bills had to be paid. 'Well, how in hell do I know they are legitimate bills?' That is some more petty-fogging, I guess. I told him, 'Any time I send a bill, it is a legitimate bill. I wouldn't send it if it wasn't.' I said, 'If those bills are not paid next month, I will take action.' November came around and I was not paid as manager, and I am not paid to this day. December 10th came around and the bills were still not paid. I couldn't do anything with Pilot. I was not an officer. I was not a director of the Pilot. But prior to that, in the office of F. C. Keane, the only one I could contact was Mrs. Vermillion, and I was just trying my hardest to get things moving, and in the course of our conversation she once said, 'The bank deposits are in terrible shape.' That was enough for me to take action. As I said a minute ago, I couldn't take any action on the Pilot, but I was president of the Lucky Friday Extension, which was also in the hands of F. C. Keane."

A. That's right.

Q. "Well, people say, 'Why in heck did you trust him?' I will tell you why. He was attorney for the Independence; he was president of the Independence Lead; he was attorney for the Clayton. They trusted him; why in hell shouldn't I? That is my answer, and I say, unfortunately. On

(Testimony of Joseph V. Grismer.)

December 12, after seeing that the bills were not paid on [441] the Pilot, I thought there was something radically wrong. I called a meeting of the Board of Directors of the Lucky Friday Extension, and that meeting was called at five o'clock because one of the members of the Board was working and was working overtime. At that meeting I told the Board the situation of things in the Pilot, and I told them that I just couldn't come to any agreement. I said, 'I can't get any statements, can't get nothing from Keane, as to the Lucky Friday or the Pilot,' and I said, 'I personally think there is something radically wrong and I will entertain a motion that F. C. Keane be discharged from the service of the Lucky Friday Extension as attorney for the Company and that his name be stricken from the bank,' and that motion was made and carried." Do you remember saying all that?

A. Yes, certainly.

Q. "Then the next motion was made and carried that the office be moved from its present location, which was in Mr. Keane's office, and I designated my own office as the office of the Lucky Friday Extension. That was carried. Then we were to move the books over immediately. Well, we went in and the then secretary, Glynn Evans, he showed us where some of the books were. All we got then was a stock ledger and a stockholders' list and the seal. The rest was in the safe. We would not enter the safe, and [442] that is all we moved

(Testimony of Joseph V. Grismer.)

over that night, but we had enough. We were in business, anyway. I put them in my office under lock and key. That night my good friend called me and called me a nice pet name. He said, 'You so and so, you burglarized my office,' and he said, 'You better have that stuff back by nine o'clock in the morning or I am going to have you arrested.' I told him, 'Well, I don't like that name connected with me, nor do I like the name burglars.' 'But,' I said, 'rest assured, Big Shot, there will be nothing back, and I will be there at eight o'clock waiting for you to arrest me.' " That's Keane you're talking about?

A. Yes, sir.

Q. "'Go to it.' But he wasn't there, and I never was arrested, not to this day, anyhow. Well, we started business. That is all we ever got out of that office, was the stock record and the stock register and the seal. To this day we haven't got a cancelled check of any kind there. He finally did send over a copy of the by-laws, a few little things like that that didn't matter any. Then I shut down the Pilot when I saw how things were and I could get no action, and I proposed, and my lawyer will testify, 'If you get one lawyer to sue another you are a genius.' Anyhow, I couldn't get to his office until about the first part of February. I figured he would be at his [443] office. I called the S.E.C. and they got after him, and after a little course of time I believe Denney got the condition of things, and he

(Testimony of Joseph V. Grismer.)

said there was about thirty-seven dollars or something in the bank.

"To this day we have no records of the company pertaining to the affairs of this company up to January 1, 1947, at the time all of this money disappeared. Not only did the Pilot money disappear but the Lucky Friday money disappeared. So I hired Mr. Wayne, who, unfortunately now is dead, as my attorney to try and get this thing going and get the records and so on, and he always threatened to start suit or one thing and another. And finally, we decided to run a bluff on him. That is when I called Mr. Allen in to help, because he knew Keane better than I did and perhaps could do something. I told him the situation. I said, 'Can you do something?' He said, 'I will go ahead and try.' He got interested and kept trying one way or another, which finally ended up—between Mr. Wayne and Mr. Allen they got the idea they were going to call a stockholders' meeting, and they threatened Keane with that, that either he resign and appoint a new board or his whole board would be removed, and that we would call a meeting and expose him and we would appoint a new board anyway, and that is what induced Keane to resign. But, as I say, we never got any [444] records of any kind of the twenty-five dollars in the kitty.

"Sure, I say, there were creditors coming in. They was trying to foreclose on those different things, and that is how Mr. Wayne kept them off.

(Testimony of Joseph V. Grismer.)

He kept them quiet for quite a period of time, until such a time as this trusteeship was worked out. I gave pretty near all of my stock that I got for payment of my company into that trustee account to make these companies whole, for the simple reason, hadn't I done it I would have lost and all of my friends would have lost. As I see it, my friends have a chance to save their stock, because a receiver would have been appointed. Otherwise, everything would have been lost. But between my friends and Mr. Allen, we saved this stock by putting this stock in the hands of trustees to make this company whole, and in the meantime start work to get some new action on there, and finally got associated with Lead and Zinc Syndicate Company, and my thanks for my efforts, after owning that property and making it what it is, owning it for twenty-eight years and giving up my stock, is a good swift kick, a letter sent out to the public telling what a low down so and so am I, and the public will fall for it, and that is the reason for mostly all of this business here tonight. Our efforts, as I said, after giving up all of these properties—what [445] do we get out of it? That is why Mr. Allen is here. I asked him in. I hope that answers the question."

Did you make that speech at a stockholders' meeting? A. Pretty much that way.

The Court: Just a moment. We've gone over a little bit the appropriate time for recess. I am assuming you've finished this particular phase?

(Testimony of Joseph V. Grismer.)

Mr. Etter: Yes, your Honor, I have.

The Court: All right, we'll recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Cross-Examination  
(Continued)

By Mr. Etter:

Q. Likewise at the stockholders' meeting, Mr. Grismer, do you recall making the following further statement: "I can tell you that during my ownership, including Mr. Walker back there, there was about \$40,000 spent on it. There was in the neighborhood of 2200 feet of work on it. A great deal of that was done by myself by hand work, and if you know what a mine is you know what hand work is. You know that is not child's play. I spent thousands of dollars of my own money to bring the property to what it is, and ninety per cent of the stockholders here now have more stock than I have, and as to what became of the money, to this day we haven't been able to get any records [446] as to what happened to anything. F. C. Keane kept them there and it is now under subpoena of the S.E.C. and we can't get it. We have made repeated efforts, asked the S.E.C. to turn those over to different parties. We always get a run-around, and

(Testimony of Joseph V. Grismer.)

no one has ever been able to find the exact amount of money that went any particular place, but it went out without the knowledge or consent of any of the Board of Directors." You made that statement?

A. That's right.

Q. And this one too, answering a question: "Mr. Grismer: Yes. Have you the report on the Pilot? I prepared charges against F. C. Keane, and at that time I knew—I could see that it was going to be a whitewash, and Mr. Bentley will testify to the fact, I got about two hours' notice to appear. I got a subpoena, and I came off the job and appeared at one o'clock at the courthouse for the hearing—no, not the hearing; it was merely regarding the plea. I called up the prosecutor. I said, 'Now, just what is the nature of this thing?' 'Oh,' he said, 'we will just gather and set the bond,' and I said, 'That is all there is to it? There will be no hearing?' 'Oh, no, no. There will be no hearing. Of course, he can demand a hearing.' I knew darn well by the tenor of his conversation that already the case had been settled. I got on the phone and [447] called Mr. Bentley and asked him to come down and asked him to witness the whitewash of F. C. Keane. Isn't that the words I told you?" Did you make that statement?

A. That is right.

Q. And this, further: "You asked the question awhile ago—I based this complaint, due to the fact that I couldn't get any books or anything. We did succeed in having a certified public accountant by

(Testimony of Joseph V. Grismer.)

Mr. Grismer, I'll ask you to examine it for just a moment.

A. Just what is it—oh, I see. Could you give me a general idea, maybe it would help along.

Q. Yes, all right. I'll ask you if that's your signature? A. That is my signature, yes.

Q. And did you swear to that in front of Therrett Towles, notary public, on or about the 15th day of February, 1949?

A. Just what is it all about? You can tell me quicker than reading it; give me a general idea, and I'd know. [450]

Q. Well, I'll read it to you, and ask you if you remember it. A. Just the general idea.

Q. I'll read this to you, Mr. Grismer, and then I'll ask you a question, with the permission of the Court.

The Court: You may proceed.

Q. This is in the case of F. C. Keane, plaintiff, versus J. A. Allen, J. V. Grismer and others, number 10224, in the District Court of the First Judicial District of Idaho, for the County of Shoshone.

(Whereupon, Mr. Etter read Defendant's Exhibit C for identification.)

Q. That is your signature?

A. Yes, sir, that is my signature.

Q. And the facts in this affidavit are the truth, are they, Mr. Grismer?

A. Very much the truth.

(Testimony of Joseph V. Grismer.)

Q. And you read this affidavit before you signed it? A. I did.

Q. And you signed it the 15th of February, 1949? A. That's correct.

Mr. Etter: I offer Defendant's Exhibit "C" at this time in evidence.

Mr. Stocking: No objection.

The Court: Exhibit C admitted.

(Whereupon, Defendant's Exhibit C for identification was [451] admitted in evidence.)

Q. When there were legal problems connected, Mr. Grismer, with the Pilot or the Extension, in the matter of quit claims, contracts, the handling of all legal matters that would go to incorporating a number of groups of claims into one group, and the like, who would you depend on for legal advice in all of these matters you've testified to?

A. F. C. Keane took the leading part in that, and I think he was assisted somewhat by Mr. Johnston.

Q. That's Mr. Elmer Johnston of Spokane?

A. Elmer Johnston, yes.

Q. Now, going back, Mr. Grismer, to the meetings, trying to direct your attention to the time as being a short period of time, a couple of days or so after the discussion that was had in the Metals Club of the Samuels Hotel, do you know about the time I mean, a few days after that discussion?

A. I didn't quite understand. .

(Testimony of Joseph V. Grismer.)

Q. Well, you remember when you were telling us about the suggestions about organizing a company, at which time Mr. Sekulic and Mr. Allen and those people were present? A. Uh huh.

Q. Then you told us that there was a subsequent meeting in the so-called Metals Club of the Samuels Hotel in Wallace? A. Uh huh. [452]

Q. Now, a few days after that, maybe the next day, I'm not quite sure, but a few days after that, didn't Mr. Sekulic request you go up and put location notices and papers up on these claims?

A. No, I don't believe—I'm sure that he didn't.

Q. Well, isn't it true that that very next day you and Mr. Lakes went up and located that property?

A. I wouldn't say the very next day, but shortly thereafter.

Q. And while you were up there locating that ground, the Lucky Friday, we're talking about—

A. Extension.

Q. —Extension, yes; while you were locating that ground, isn't it a fact that John Sekulic, who was associated with the Big Friday, and Judge Featherstone, who is likewise a director of the Big Friday, came up to you and talked to you, when you were up there on the ground? A. Yes.

Q. And while you were surveying there didn't they both assure you that a claim known as the Molly Number 3 was their claim?

A. I wouldn't say that they particularly men-

(Testimony of Joseph V. Grismer.)

tioned claim number 3 or so, but they asked what I was doing on their ground.

Q. On their ground?

A. On their ground, yes. [453]

Q. And what did they say then?

Mr. Stocking: I think we'll object to this again; this is the Big Friday, as I understood it.

The Court: Overruled.

A. Overruled?

Q. Did they come up, these gentlemen, and talk to you?

A. Yes, they asked me what I was doing on their ground. Well, I says, "I don't know which is your ground and which is not."

Q. You just said, "I'm supposed to be up here surveying and locating," isn't that right?

A. Yes, something to that effect.

Q. And they said the ground you were on there was their Salvatori claim, or something like that, didn't they?

A. I wouldn't know whether they mentioned the particular name. They let me know it was their ground.

Q. Didn't you check the records in the courthouse? A. Later on I did.

Q. And didn't you find there was a notice of intention to hold filed by Chas. Horning, as attorney and director of the Big Friday? A. And—

Q. And W. J. Emacio, as director?

A. That's right.

(Testimony of Joseph V. Grismer.)

Q. And after that you had some conferences with John Sekulic [454] and likewise Mr. Horning about that problem, didn't you?

A. I don't know; we had quite a few conferences; I don't recall whether there was anything particular on that.

Q. Now, isn't it true that Keane gave you a contract which was drawn by Keane and Horning between the Lucky Friday Extension and the Big Friday? A. Contract on what?

Q. The contract between the Big Friday and the Lucky Friday Extension for the advance of money by Lucky Friday Extension for the development of the shaft; didn't Keane give you the contract that he and Horning had prepared on that arrangement?

A. I was given a contract regarding development work and payment thereof, but exactly who gave it to me I can't recall, but presumably it came from Keane's office, because that's where everything was done.

Q. And it provided, did it not, that you or your company would pay over to the Big Friday, that is, Mr. Sekulic and Mr. Horning and Judge Featherstone and these other people who were interested, you would pay over a large amount of money for the development of their shaft and likewise exploration over into the Lucky Friday Extension ground?

A. That is right.

Q. Wasn't that the contract? [455]

(Testimony of Joseph V. Grismer.)

A. That was the contract presented.

Q. And you took that contract up to Mr. Allen and asked him about it, isn't that so?

A. No, Mr. Allen wasn't there. I took it home and read it, and called up Mr. Allen and told him I refused to sign it.

Q. You called Mr. Allen?

A. I called Mr. Allen.

Q. And you asked him about it?

A. I told him I refused to sign it.

Q. And Mr. Allen told you, as a matter of fact, it was too one-sided?

A. I don't know. It was my idea it was too one-sided.

Q. Didn't Mr. Allen tell you the contract was one-sided, and that the Big Friday was going to get all the benefit?

A. That was my contention, I know.

Q. And it was Mr. Allen's, wasn't it, when you took the contract to him?

A. Whether he made the particular statement I couldn't tell.

Q. You don't remember, but you wouldn't say he didn't, would you?

A. I wouldn't say he didn't, no.

Q. Now, do you recall, did Mr. Keane turn over to Mr. Horning a large block of the Lucky Friday Extension stock in your name for Horning and Mr. Sekulic and Judge Featherstone, who were directors of the Big Friday? [456]

(Testimony of Joseph V. Grismer.)

A. I had absolutely nothing to do with the handling of the stock after—

Q. I know, but do you know whether he did?

A. I don't know.

Q. Well, when you got the stock books, this is after you people took over from Mr. Keane and the others, when you got the stock book and examined them didn't the book disclose that the stock had been over-issued because of the issuance of the certificate to John Sekulic?

A. The secretary told me there was an over-issue, so far as I know.

Q. Yes, and the reason given was because of the issuance of the certificate to Sekulic, isn't that right?

A. Which it was, we didn't go into detail.

Q. But you found out that that certificate was held in Mr. Horning's office, didn't you?

A. Later on, yes.

Q. And that certificate had been handed over and Mr. Horning had it in his office, didn't he, this large certificate?

A. I didn't know it at the time, but later on it proved to be the fact.

Q. You went to Horning's office, though, didn't you? A. Under instructions.

Q. You bet, and you told Mr. Horning you wanted the certificate back? [457]

A. Quite a number of them.

Q. And Mr. Horning gave you the certificate

(Testimony of Joseph V. Grismer.)

back? A. I signed a receipt, yes.

Q. So you found out that a certificate had been issued to Mr. Sekulic, and Mr. Horning had it, didn't you?

A. I presume that was in that bunch, yes.

Q. Do you remember how much it was?

A. Between five and six hundred thousand shares.

Q. Between five and six hundred thousand shares of the Lucky Friday Extension stock had been given to Mr. Sekulic and Mr. Horning had it, didn't he?

A. I wouldn't know who it was given.

Q. But Mr. Horning had it in his safe, didn't he?

A. Yes.

Q. And you got it back? A. I got it back.

Q. And that's the same Chas. Horning, attorney at law from Wallace, who testified here?

A. I wouldn't know, I didn't see him here.

Q. Yes, but do you know of any other Chas. Horning in Wallace, Idaho?

A. No, I don't. Must be the same man.

Q. Now, you had some pictures taken of the mine and you also had some pictures taken down in the main shaft of the Big Friday, didn't you?

A. That's right.

Q. And who arranged for the photographer to come up and take those pictures?

A. I wouldn't know.

Q. Elmer Johnston, didn't he, the Spokane attorney?

(Testimony of Joseph V. Grismer.)

A. I wouldn't know. The man appeared.

Q. How many visits did you make to Mr. Johnston's office in connection with legal matters?

A. I can only recall one visit.

Q. Don't you recall that there were two or three?

A. It is very likely, but I do not recall them.

Q. And you talked at least once with Mr. Johnston about an underwriting agreement?

A. I don't recall that.

Q. But did you talk to Mr. E. J. Gibson about it?

A. Oh, yes.

Q. And you and Mr. Gibson—Mr. Gibson operated a fairly large brokerage house, isn't that so?

A. That is right.

Q. And you know Mr. E. J. Gibson?

A. Know him well.

Q. And he recently disposed of his company to Hogle & Company? A. That's right.

Q. And he disposed of part of the stock?

A. That's right. [459]

Q. And you went to lunch with Mr. Gibson at the City Club? A. That's right.

Q. And you discussed the underwriting agreement? A. Correct.

Q. And at that time that you were discussing the underwriting agreement at the City Club both of you talked with Mr. James Newton of the Securities and Exchange Commission, isn't that so, during that day? `

(Testimony of Joseph V. Grismer.)

A. I don't recall that we had a talk with Mr. Newton.

Q. I see. Now, the underwriting agreement that was handled by Pennaluna and Company, Mr. Grismer, did you have any direct connection with that, or did Mr. Gibson, or do you know who did?

A. I talked to Pennaluna whether they would handle the block.

Q. Did Mr. Gibson work with you on that, or was it just you?

A. No, I just went to Mr. Howarth, I think.

Q. You went to Mr. Chet Howarth and talked about this? A. Yes.

Q. And did you talk to Mr. Jerry O'Brien, who was then the owner of Pennaluna?

A. I believe it was Mr. O'Brien I talked to.

Q. Of course, Mr. Howarth was the manager?

A. Correct.

Q. It might have been either of them or both of them, is that correct? [460]

A. Yes, that's correct.

Q. And at the time that you talked with Mr. Gibson here in Spokane didn't you talk with him likewise in a general way about the formation of the Pilot Company, in which you were vitally interested, during your discussion?

A. I don't believe we did; I don't know whether we did or not.

Q. You don't remember?

A. We had a lot of friendly talk; I don't recall.

(Testimony of Joseph V. Grismer.)

Q. You had an interest, of course, in the Pilot group of claims for many, many years?

A. Yes.

Q. And as you say, and it's true, you had run about two thousand feet of tunnel by hand?

A. Well, caused to be.

Q. Did a lot of work on it all these years?

A. You bet.

Q. And you were interested in the Pilot group?

A. I certainly was.

Q. And still are? A. In a small way, yes.

Q. And it's highly possible that you could have talked to Mr. Gibson about that Pilot incorporation, isn't that so?

A. It's only natural. I was vitally interested in it.

Q. And isn't it true too that on one or two occasions, Mr. Grismer, when you were here in Spokane, that you talked to [461] Mr. Elmer Johnston a couple of times about your Pilot holdings or what became the Pilot, your different claims up there? A. Yes.

Q. And when you talked it over with Mr. Johnston this was before the formation of the Pilot Company, wasn't it? A. I don't remember.

Q. I mean, it was during the Lucky Friday Extension, the preparations for that issue, wasn't it, when you talked to Mr. Johnston about those claims?

A. Well, if I talked to Johnston I was sure to

(Testimony of Joseph V. Grismer.)

mention it, because that was foremost in my mind.

Q. Isn't it true when you talked to Johnston, and that was during the formation of the Lucky Friday Extension, Mr. Johnston wanted to make a direct deal with you, he wanted to take the Pilot over himself or some of his friends?

A. Oh, I don't know whether we come to a definite understanding.

Q. He proposed it?

A. He's always got some proposal.

Q. It could have been?

A. It could have very well been.

Q. And Mr. Johnston had an engineer working for him by the name of Nettinger?

A. Yes, he's employed by the Silver Dollar.

Q. Mr. Johnston represents the Silver Dollar, doesn't he? A. Yes.

Q. Mr. Nettinger had a report, did he not, on ground which included your claims, which later became the Pilot group?

A. He made that report for me about 1926.

Q. And you gave Mr. Nettinger, I think, the engineer, you gave him some stock in the Pilot later on for some of the excerpts in the report which were used in the prospectus?

A. I promised Mr. Nettinger stock if we ever incorporated or made a mine out of it, I'd see that he would be paid off, but that was not in payment for the report in the prospectus.

Q. I see. Now, after you and your associates, or

(Testimony of Joseph V. Grismer.)

Mr. Allen and you, and who else was it that took over the board of directors from Mr. Keane and his group, was it you and Mr. Allen and Mr. Mullen?     A. Yes.

Q. I see, and you elected officers at that time?

A. Yes.

Q. And that was in what, 1947 or 1946?

A. 1948—oh, no, I believe your '47 is right.

Q. Well, I'm not sure.

A. February, '47.

Q. Would that be, just to get the date, would that be possibly later, maybe in August, 1947, Mr. Grismer? [463]     A. It was in 1947, I know.

Q. Yes, I'm just trying to get fairly close to it myself. Now, you had a meeting of the board of directors after you took over, is that right?

A. That is right.

Q. And then you found—you still didn't have the bank statements, did you?     A. No.

Q. Or the bank checks?     A. Nothing.

Q. Or the financial account?     A. Nothing.

Q. You never knew anything about it and never could get it, could you?

A. Couldn't get anything.

Q. And there was a considerable amount of vendor's stock had been issued to you, hadn't it, originally?     A. Not in the Pilot.

Q. No, in the Lucky Friday.

A. Oh, the Extension, you're talking about?

Q. Let me see here. One moment, your Honor.

(Testimony of Joseph V. Grismer.)

Make it this way: You found the affairs of the Lucky Friday and the Pilot both in the same shape, for the purpose of the record?

A. Yes, they were financially in about the same shape. [464]

Q. And you couldn't get the bank statements, as I said before, for either one, isn't that right?

A. For neither of them.

Q. And you couldn't get cancelled checks or any financial reports at all?

A. Couldn't get nothing.

Q. And you never did get any until Mr. Randall, who is a certified public accountant at Wallace, was permitted by the government to take the records and make an audit? A. That is right.

Q. Isn't that correct? A. That's correct.

Q. Directing your attention to the latter part of the year 1946, Mr. Grismer, that was somewhere around in November, I'd say, do you recall at that time that the Pilot, I believe it was, had made some negotiations for the purchase of some equipment and machinery, including a motor? A. Yes.

Q. And at that time Mr. Sekulic, I think, had paid for it, hadn't he?

A. There was quite a controversy.

Q. Quite a mix up?

A. I know that Mr. Keane refused to pay for it.

Q. You couldn't get Mr. Keane to pay for it?

A. Couldn't get him to pay, and whenever I jumped him he [465] howled because I was spend-

(Testimony of Joseph V. Grismer.)  
ing too much money on equipment and machinery.

Q. You needed the equipment, and Mr. Sekulic claimed that he had paid for it? A. Yes.

Q. What equipment was that?

A. I believe it was the electric motor and a mucking machine.

Q. And you needed, as I recall, about seven thousand dollars? A. In that neighborhood.

Q. And you personally went to Mr. Allen and told him about this situation, isn't that so?

A. Yes, Mr. Keane or Mr. Sekulic was riding me about it.

Q. You talked to Mr. Allen then about getting this money? A. Yes.

Q. And Mr. Allen gave this check for \$7,000 for the payment of that machinery, isn't that so?

A. I presume that is what it is for, about the date and the amount.

Q. And the machinery was then acquired, was it not, by the Pilot? A. Yes, it was.

Q. That was Plaintiff's Exhibit 18, and do you know whether or not the money was then given over to Mr. Sekulic, Mr. Grismer?

A. I wouldn't know. [466]

The Court: Is that Exhibit 18?

Q. That was; I think exhibit 18 was dated about November 20 of 1946. It was about two and a half or three months after that, was it, Mr. Grismer, or a number of months after that, you took over the Pilot from Mr. Keane?

(Testimony of Joseph V. Grismer.)

A. On December 12 I got action on the Extension, and I think it was January or February I got him out of the Pilot.

Q. That's right, and that was the course of events up until that time? A. Yes.

Q. So in the early part of '47 Mr. Keane and his group were out of the Pilot and out of the Extension? A. Yes.

Q. And you and Mr. Allen and Mr. Mullen, I think, were directors of both companies?

A. That is right.

Q. Is that correct? A. That's correct.

\* \* \*

Q. Now, after these events in which you took over both these companies, did Mr. Allen make a number of advances to the Pilot and to the Extension that you know of, Mr. Grismer?

A. He made them for them, yes.

Q. And did you and Mr. Mullen do some work on those two properties or do some work for the corporation during the ensuing months after they had been taken over by your people?

A. Yes.

Q. And do you know how many months that was? A. It wasn't very long.

Q. And can you tell me who paid the expenses of the operation of the companies during that period of time?

A. Mr. Allen would send me a personal check. I wouldn't know where it came from, I presume it was his private funds. I deposited it to a trustee

(Testimony of Joseph V. Grismer.)  
account and checked out from it. [468]

Q. And was Mr. Mullen operating the same way, or did you pay Mr. Mullen what was necessary?

A. I paid all about the same way.

Q. Have you any idea about what the amount of those advances were? A. No, I haven't.

Q. Did you and Mr. Allen have any discussion at that time, after you people came into control of the companies, with regard to disposing of any stock that the companies had at that time?

A. Which stock do you have reference to?

Q. Stock that you had on your certificate that hadn't been used or sold?

A. No, I'm sure we didn't.

Q. Well, do you know whether or not any of such stock was sold after you came into control?

A. I wouldn't know. He borrowed a hundred thousand off of me; what the date was I don't recall.

Q. And do you know whether that was sold?

A. I have no idea. I never got it back.

Q. You have no recollection of it being sold?

A. No.

Q. But you don't recall that you had any discussion about raising funds at that time? [469]

\* \* \*

#### Redirect Examination

By Mr. Stocking:

Q. Mr. Grismer, there was some testimony given by you of your going into Mr. Horning's office and

(Testimony of Joseph V. Grismer.)

getting some stock that he held there, I think it was referred to as the Sekulic stock. Do you recall that portion of your testimony on cross-examination? [475]

A. I do.

Q. Who if anyone instructed you to go to Mr. Horning's office and get that stock back?

A. Mr. Allen asked me to do so.

Q. Referring to Defendant's Exhibit C, which was the affidavit sworn to by you before Mr. Towles, do you know who prepared that affidavit, Mr. Grismer? A. I didn't prepare it, no.

Q. Was it prepared in this form when you were asked to sign it? A. I believe it was.

Q. Did you confer with someone about the contents of the affidavit? A. Did I what?

Q. Did you confer with someone about the contents of the affidavit before it was prepared?

A. No, I didn't.

Q. What were the circumstances under which this affidavit was signed?

A. Oh, I perhaps talked some of the aspects over, yes, but not in relation to the affidavit.

Q. You talked them over with whom, Mr. Towles or Mr. Allen?

A. With Mr. Allen and I believe Mr. Towles.

Q. And then the affidavit was prepared?

A. It was prepared. [476]

Q. And given to you for your signature?

A. That's right.

Q. I notice in the affidavit, the second paragraph,

(Testimony of Joseph V. Grismer.)

the following sentence: "That in 1945 he located the mining claims" and this is referring to yourself, "that were acquired by Lucky Friday Extension Mining Company that was organized by the plaintiff Keane in that year". In reading that over what did that word signify to you when you signed the affidavit, the word "organized" by plaintiff Keane?

Mr. Etter: I'm going to object to that question, your Honor; it speaks for itself.

Q. What was your interpretation of that word "organized"?

The Court: Overruled.

Mr. Emigh: Exception.

A. I presume it had reference to the organizing of the Extension.

Q. And by the word "organized" just what did you refer to that Mr. Keane had done?

A. Well, I suppose organizing means the incorporating of the company.

Q. Drawing articles?

A. Well, anything that would be referred to it, as far as I know, what his activities were.

Q. And at the time you read this over and you signed it and [477] swore to it, you believed that it was a substantially truthful statement, isn't that correct, Exhibit C?

A. Well, as far as my knowledge of legal terms and so on, I thought it was quite correct.

Mr. Stocking: That's all.

(Testimony of Joseph V. Grismer.)

## Recross-Examination

By Mr. Etter:

Q. Just one or two questions. Mr. Grismer, counsel asked you or you stated in answer to counsel's question that you went over to Mr. Horning's office and requested the certificate, that is, the so-called Sekulic certificate, and that Mr. Allen told you to do that, that's correct, isn't it?

A. That is correct.

Q. Now, that was after you and Mr. Allen, or Mr. Allen at your request, had thrown Keane out of the company and had made them all resign, isn't that right? A. I don't recall.

Q. Well, you were then an officer of the company and so was Mr. Allen, isn't that so?

A. I was an officer of the company, yes.

Q. And Mr. Allen was likewise an officer of the company?

A. I wouldn't recall; I'd have to look up the dates.

Q. Well, did Mr. Allen send you over to get that certificate before you got Keane out of office?

A. Why, no, it was after. [478]

Q. It was after you threw Keane out and had Mr. Allen's help that he asked you to go out and get that certificate?

A. It was after Keane was out of the office.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

(Testimony of Joseph V. Grismer.)

The Court: Just a moment; is there any reason why Mr. Hawkins should remain longer?

Mr. Etter: No reason on behalf of the defendant, your Honor.

The Court: Mr. Grismer is excused. Mr. Hawkins is excused.

### RUTH NOLTING

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. State your name, please?

A. Ruth Nolting.

Q. And where do you reside? It's Miss Nolting, is it not? A. Yes. Spokane.

Q. How long have you been employed here in Spokane? A. About 25, 20—22 years.

Q. And you have been an employee of the Gibson stock brokerage firm? A. Yes.

Q. What is the— [479]

A. E. J. Gibson & Company; I was with them for about fifteen years.

Q. And you were an employee of E. J. Gibson during the years 1945, 1946 and 1947, is that correct? A. Yes.

Q. What was your position there with Mr. Gibson's office during that time?

A. I was the secretary-treasurer of the company.

Q. That was a corporation, was it?

(Testimony of Ruth Nolting.)

A. Yes.

Q. You are familiar with the offerings of stock which were made by the Lucky Friday Extension and Pilot Silver Lead Mines, Inc., companies?

A. Yes, I was.

Q. What part did you play in connection with those offerings?

A. Well, I took care of the office work and letters that went out for transfers of stock.

Q. Mr. Gibson's firm, I mean this firm of Gibson & Company, was one of the underwriters for the issue? A. Yes, they were.

Q. And were you then in charge of—you say you took part in this issuance of letters?

A. Well, I was taking care of the—part of the cashiering at the time, cashiering and sending out transfer letters and work of that type. [480]

Q. In connection with those offerings just exactly what transpired with relation to how the orders were secured from the investors and how the stock certificates were secured, and final delivery; could you give us that?

A. Well, a prospectus was made up and registered with the Securities and Exchange Commission.

Q. That was filed as an unregistered prospectus, was it not?

A. Yes, for unregistered stock, and each of the brokers participating were allotted so many shares of stock to sell.

(Testimony of Ruth Nolting.)

Q. And what was the procedure then after you received these prospectuses?

A. Well, every customer had to receive a prospectus when he purchased stock, and the prospectus was mailed out to our mailing list of customers with an order blank, and they could send it back to us for an order for this stock.

Q. You sent these prospectuses, then, to approximately how many of your mailing list, would you say?

A. I don't know. Our active list at that time as near as I can remember might be three thousand or ten thousand, I don't remember just how many were sent out, but we didn't send it out to the entire list, I don't believe, at that time.

Q. Was it sent to several different states in the Union? A. Yes. [481]

Q. And you say these orders would then come in from the customers? A. Yes.

Q. And then what was the procedure?

A. Well, they were usually accompanied by a check, and we just made out a confirmation, mailed it to the customer, and ordered the stock transferred from the transfer office.

Q. And where was the transfer office located?

A. The offices in these various issues that you mentioned were in Wallace.

Q. And then what was the procedure as far as getting certificates were concerned?

A. Well, they were mailed back to us, the new

(Testimony of Ruth Nolting.)

certificates registered in the clients' names, and they were then re-mailed to the clients from our office.

Q. From your office? A. Yes.

Q. Now, in connection with the certificates of Lucky Friday Extension Mining Company, I hand you Plaintiff's exhibit 51 and ask you if you can identify those letters as being the letters with which the certificates were received in your office?

A. Those are our customers, yes.

Q. And where did these letters come from?

A. Well, this would come from the Lucky Friday Extension [482] Mining Company, and it would come back with the stock certificates issued to our clients' names.

Q. The stock certificates listed in each letter would be accompanying the letter when it arrived in your office? A. Yes.

Q. And have you examined all of those letters and can you identify it and testify as to whether or not they were—

A. They are all our customers.

Q. —received in your office through the mails?

A. Yes.

Q. They were. These are letters, exhibit 51 are letters which were furnished from your office file. Is that correct? A. Yes.

Q. At our request. Handing you Plaintiff's Exhibit 19, I'll ask if you can identify—for identification, I'll ask if you can identify Exhibit 19?

(Testimony of Ruth Nolting.)

A. These are all our letters.

Q. They were all letters from your file?

A. Yes.

Q. And where did you receive those letters?

A. From the Pilot Company.

Q. In Wallace, Idaho? A. Yes.

Q. And where did you receive these, I mean where did you [483] obtain these letters?

A. Well, they would come by mail.

Q. They came by mail? A. Yes.

Q. And were they all in envelopes addressed to E. J. Gibson & Company of Spokane, Washington? A. Yes.

Q. And they were received here in Spokane, Washington, through the mails? A. Yes.

Q. And that is with respect also to the Exhibit 51 letters? A. Yes, that's right.

Q. Do you know about the time it takes for letters which were mailed in Wallace to be received in your office?

A. They should come in the next day, but they don't always come in. I mean mail is very irregular to and from Wallace.

Q. But it would be within a day or two days, usually? A. Yes.

Mr. Stocking: We'll now offer in evidence Plaintiff's Exhibit 19. Exhibit 51 has already been, and I'll say that these contain some indictment letters and some letters connected with the overt act counts, so that they're all mentioned in the

(Testimony of Ruth Nolting.)

indictment. They were identified by the witness Irene Vermillion as having been [484] mailed.

Mr. Etter: I'm going to object to the admission of these exhibits at this time on the ground that they're incompetent, irrelevant and immaterial in the present state of the record, no proper foundation has been laid, no connection has been shown between any of the exhibits identified and the defendant Allen under any count of the indictment charged in this case, it doesn't indicate that the defendant Allen was in any way directly or indirectly in connection with this transaction privy to any transaction contained in it purporting to relate to the indictment, and the mass therein contained, so far as the evidence now adduced, will merely lead the jury to conjecture and speculation.

The Court: Exhibit 51 has heretofore been admitted. The previous admission is ratified. As to Exhibit 19, I'm not too certain as to the testimony concerning two of these letters therein contained, which are not signed.

Mr. Stocking: The testimony was as to all of the letters that she had prepared them and mailed them, Irene Vermillion.

The Court: That portion of Exhibit 19 made up of signed letters is admissible at the present moment. I dislike breaking the exhibit up, and Exhibit 19, ruling [485] continues reserved until I can check my notes as to Mrs. Vermillion. You say

(Testimony of Ruth Nolting.)

she's the one who said that all of these letters, whether they're signed or not, were mailed?

Mr. Stocking: Yes. I'll ask one more question.

Q. (By Mr. Stocking): Were all of these letters in Exhibit 19 taken from your files and furnished to us? A. Yes, they were.

Q. So that all of these letters were received by you even though it appears that a letter dated May 29, 1946, does not contain a signature?

A. Yes, they're our customers.

Q. These were your customers. You recognize those names? A. Yes, and our nominee.

Q. And the nominee of yours is what?

A. B. A. Fogelquist is a nominee of ours.

Q. That's common practice when stock is taken by a broker, they put it in the name of a person as nominee? A. As nominee, yes.

Q. And another letter here of May 29, 1946, does not appear to have a signature. That was also received in your office?

A. Yes. Yes, those are some of our people.

Q. And you have also furnished us with the carbon copies of the letters sent to the brokers containing these same lists of names, is that correct? [486] A. Yes.

Mr. Stocking: We'll renew the offer. If the Court desires, we could designate those two letters of May 29, 1946, as separate exhibits in order that the Court could check his notes further. I think that the receipt of them, though, is—

(Testimony of Ruth Nolting.)

The Court: It doesn't make any difference whether I accept that today or tomorrow?

Mr. Stocking: No.

The Court: Well, all right.

(Whereupon, Prospectus of Pilot Company was marked Plaintiff's Exhibit No. 68 for identification.)

(Whereupon, Prospectus of Extension Company was marked Plaintiff's Exhibit No. 69 for identification.)

Q. (By Mr. Stocking): Can you identify Plaintiff's 68? A. Yes.

Q. What is it?

A. The prospectus for the Pilot offering.

Q. This is the prospectus that was mailed out to your customers? A. Yes, it was.

Q. In connection with the Pilot offering.

Mr. Etter: What's the number of that?

Q. 68. Can you identify Plaintiff's 69? [487]

A. Yes, that's the prospectus for the Lucky Friday Extension.

Q. And can you identify that as the prospectus that was mailed out to your customers?

A. Yes, it is.

Mr. Stocking: We'll offer these in evidence, 68 and 69.

Mr. Etter: The defendant has no objection to the admission of Exhibits 68 and 69.

(Testimony of Ruth Nolting.)

The Court: Exhibits 68 and 69 are admitted.

(Whereupon, Plaintiff's Exhibits No. 68 and 69 for identification were admitted in evidence.)

(Whereupon, Gibson ledger sheet, account Helen Allen, was marked Plaintiff's Exhibit No. 70 for identification.)

Q. (By Mr. Stocking): I hand you what has been marked Plaintiff's Identification number 70, and ask you if you can identify that as a record of E. J. Gibson Company? A. Yes, it is.

Q. And what record is it?

A. It's our bookkeeping record, our original bookkeeping record.

Q. For what account?

A. For Helen Allen.

Q. Do you know who Helen Allen is?

A. Yes. [488]

Q. Who is Helen Allen?

A. Mrs. Jim Allen.

Q. Is that the wife of the defendant Allen?

A. Yes.

Q. And do you know who opened that account in the name of Helen Allen?

A. No, I don't.

(Whereupon, Gibson ledger sheet, account Helen Jorgenson, was marked Plaintiff's Exhibit No. 71 for identification.)

(Whereupon, Gibson ledger sheet, account

(Testimony of Ruth Nolting.)

B. A. McLean, was marked Plaintiff's Exhibit No. 72 for identification.)

Q. (By Mr. Stocking): I hand you Plaintiff's Exhibit 71 for identification and ask you if you can identify that?

A. That's Helen Jorgenson's account.

Q. And that's a record of her account with your corporation? Yes.

Q. And do you know who Helen Jorgenson is?

A. Well, I did when I found out recently. I didn't know at this time who Helen Jorgenson was.

Q. Well, do you know now who Helen Jorgenson is?

A. Well, I understand it's Mrs. Allen's maiden name.

Q. Do you know who opened that account in Helen Jorgenson's name?

A. No, not at that time. [489]

Q. I hand you Plaintiff's identification number 72, and ask you if you can identify that?

A. That's B. A. McLean's account.

Q. B. A. McLean's account? A. Yes.

Q. Do you know who opened that account?

A. No, I don't.

Q. I now hand you Plaintiff's Exhibit 48, which is identified as E. J. Gibson checks made out to—five made out to B. A. McLean and one made out to cash, and ask if you can identify the checks in that exhibit?

The Clerk: That's for identification.

(Testimony of Ruth Nolting.)

Q. Yes.

A. Those are all our checks.

Q. Issued by your company?

A. By the company at that time.

Q. Now, with regard to the account for B. A. McLean, can you state if these are the checks which were issued in connection with the payments made on the B. A. McLean account?

A. Yes, they are.

Q. Those are the checks?

A. Yes, all of them.

Q. What about this first check that was issued to cash in that account, and bears no endorsement?

A. Customers frequently come in and ask us to pay cash. If we have cash on hand we make out a check to cash and pay cash in payment of the stock, and when they deliver the stock we give them the confirmation and the cash.

The Court: Does the jury hear? You're not talking to this attorney; you're talking to these fourteen jurors.

Mr. Stocking: I think you had better give that answer again.

A. Well, if a client comes in with stock, if he asks for cash and we happen to have cash, or send to the bank for it, we give him cash in return for his stock, and a receipt. That was what we did at that time, and if he asked for a check we gave him a check.

Q. Do you have anything to indicate to whom

(Testimony of Ruth Nolting.)

this check made out to cash, January 20, 1947, in the amount of \$2,238.95 was given to?

A. No. If the stock was delivered on that account with a confirmation or the receipt that we had issued, cash or a check was issued against it.

Q. And it could be presented to some other person than B. A. McLean if the stock was brought in by some other person than B. A. McLean?

A. That's right, if the stock and the confirmation were brought in. [491]

Mr. Stocking: We'll offer in evidence Plaintiff's 72 and Plaintiff's 48, in the B. A. McLean account, and checks made out on that account identified as having been endorsed either to the account of James A. Allen or endorsed by J. A. Allen, that is as to five of the checks, together with B. A. McLean's testimony regarding Mr. Allen's statement to her about this account.

Mr. Etter: I'm going to object to the Exhibit 72 on the ground that an improper foundation has been laid. It's not connected up in any way to prove any allegation of any count in the indictment against James A. Allen, nor does it show, even what counsel has stated, any privy of transaction of the defendant as related to any count in the indictment; it's incompetent, irrelevant and immaterial at this time; that's as to 72, and I want to add further along with that objection, to the Exhibit marked 48, that on the face of the exhibit each and every check so designated, beginning with

(Testimony of Ruth Nolting.)

January 20, 1947, and going through March 21, 1947, is incompetent, irrelevant and immaterial to prove any issue made by this case as to the joint concert alleged in counts one to seven of the indictment, including those, if the Court please, on mail fraud, security fraud and conspiracy, and on the ground the evidence has already disclosed and there's no contradiction thereto that there couldn't have been any joint [492] concert or action between the defendants after the witness Grismer and Allen the defendant had thrown out, if you call it that, or demanded and secured the resignation of Mr. Keane, who is charged as an actual accomplice in all the general counts of the indictment running up to the present time, and that these on no theory can prove any count set forth in that indictment, beginning January 20, 1947.

The Court: What about concert of action between Mr. Allen and Mr. Grismer?

Mr. Etter: There is no allegation there was any concert of action between them, and as to Mr. Grismer, six counts alleging such concert of action have been dismissed.

The Court: That makes no difference. It is my understanding that if Mr. Grismer and Mr. Allen were in a conspiracy, that that's sufficient to convict even though there was a larger conspiracy which was divided and broken when Mr. Grismer and Mr. Allen on one side and Mr. Keane on the other parted company. Now, is there any contention on

(Testimony of Ruth Nolting.)

your part that it's necessary that the evidence prove more than that Mr. Allen conspired with Mr. Grismer?

Mr. Etter: It certainly is, on this ground, that the indictment, if the Court please, as to every count alleges prior to June 1, 1945, and continuing to the date [493] of this indictment, naming each and every one of the defendants as being co-conspirators with no allegation at all made that there was ever any conspiracy, so-called, existing between any two separate defendants beginning at any particular time, but that it was continuing conspiracy between all three.

The Court: Well, counsel, the law is long established that if the government alleges a conspiracy between ten people and only proves it between two, that that's sufficient. The government is not required to prove that the conspiracy was as large as it alleged. It must prove beyond all reasonable doubt, where there's a conspiracy, that the one tried conspired with one or more other persons, but it's not essential that the government establish that the conspiracy was all-inclusive, nor that some person did not withdraw from the conspiracy at a certain time, so it would seem to me that under the law as I understand it of conspiracy, that your objection is not meritorious.

Mr. Etter: I take exception on the further ground that there's no connection of these checks on their face or in any other way or of the testi-

(Testimony of Ruth Nolting.)

mony developed so far with the defendant Allen.

Mr. Stocking: I'm going to state to the Court that they're offered also under the theory that the indictment [494] alleges that the defendants disposed of large amounts of the promotion stock of Extension and Pilot after the price of the stock had been raised, the market value of the stock had been raised through their creation of appearance of activity at the mining properties.

The Court: Exhibits 72 and 48 are admitted; objections overruled.

Mr. Etter: Exception.

The Court: Exception noted.

(Whereupon, Plaintiff's Exhibits No. 48 and 72 for identification were admitted in evidence.)

(Whereupon, Gibson checks to Allen were marked Plaintiff's Exhibit No. 73 for identification.)

Q. (By Mr. Stocking): I hand you Plaintiff's identification 73, and ask you if you can identify that in connection with the Helen Allen account, plaintiff's for identification number 70, identify the checks in that exhibit 73?

A. These are E. J. Gibson Company checks.

Q. And can you further identify them?

A. They're in payment of this account, yes.

Q. They're in payment of the Helen Allen account? A. Yes.

Q. Now, you'll notice that some of the checks

(Testimony of Ruth Nolting.)

are made to J. A. Allen and some of the checks are made to Helen A. [495] Allen, but they're all in payment of this Helen Allen account, is that correct?

A. Yes.

(Whereupon, summary of sales of Extension stock, Helen Allen account, to Gibson Co., was marked Plaintiff's Exhibit No. 74 for identification.)

Q. Now, does the Helen Allen account, Plaintiff's exhibit 70, disclose the sales for that account of Lucky Friday Extension Mining Company stock?

A. Yes.

The Court: What was that question? Read it, please, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

Q. The answer was yes? A. Yes.

Q. And have you made up a compilation of the number of shares, the dates of sales, the amount per share, and total amount for the number of shares sold on each date, together with the total amount of the number of shares sold in that account and the total dollars paid, or total value of the shares sold in that account of the Lucky Friday Extension Mining Company stock? A. Yes.

Q. And did you make that up from the records of E. J. Gibson [496] & Company? A. Yes.

Q. And is that your compilation, this Plaintiff's exhibit 74? A. Yes.

(Testimony of Ruth Nolting.)

Mr. Stocking: We'll offer Plaintiff's 70, 73 and 74 in evidence. I'll ask one question to clarify this Exhibit 73, which are the checks.

Q. Those checks of course contain payments for the sales of stock other than Lucky Friday Extension which were carried in that account, is that correct?

A. Yes, anything to balance the account.

Q. Yes, but the total amount of sales of Lucky Friday Extension which went through that account are shown on the compilation which you prepared?

A. Yes, that's right.

Mr. Etter: I'd like to object to the admission of all or any of these exhibits, your Honor, on the same grounds as previously made to the last exhibit. My throat is getting bad on me.

The Court: Is the compilation, exhibit 74 for identification, wholly concerned with identification exhibit 73 and identification exhibit 70?

Mr. Stocking: Yes; that's correct, is it not?

A. Yes.

Mr. Stocking: The only thing is that the other two exhibits are more inclusive. They include other stock transactions, but they're the basis of the compilation.

The Court: What is the total of the checks in exhibit 73 for identification?

Q. Did you total those checks?

A. I don't think I did. I believe the list is totalled, but not the checks.

(Testimony of Ruth Nolting.)

Mr. Stocking: The offer of the checks, if the Court please, will be limited, if the other exhibits are admitted, for the purpose only of showing the name of the payee and the names of the endorsers. That's the purpose of it, of course; the checks do cover other items in the Helen Allen account.

The Court: I was wondering about how much they represented?

Q. Is there some way you could tell?

A. I think I could.

Mr. Stocking: I think she could tell by looking. Will you point to the items that are—

The Court: I don't wish the record to be confused. If she wants to take a pad—

A. Well, there's \$41,908.00 of these checks are for Lucky Friday Extension.

The Court: Well, what's the total amount? Just a [498] moment; I don't want her to write on an exhibit.

Mr. Stocking: She's writing on a scratch pad.

A. The checks total \$53,578.00.

Q. And 90—

A. And 90 cents, and the list totals \$41,908.84.

The Court: All of the checks then were some \$53,000?

A. Yes.

The Court: And of the \$53,000, \$41,000—

A. \$41,900—

The Court: —represented Extension?

A. Yes.

(Testimony of Ruth Nolting.)

The Court: Then there was about eleven or twelve thousand dollars in addition?

A. Yes.

The Court: Let me see the exhibits now. Objections overruled.

Mr. Emigh: Exception.

The Court: Exhibits 70, 73 and 74 admitted.

(Whereupon, Plaintiff's Exhibits 70, 73 and 74 for identification were admitted in evidence.)

Mr. Stocking: I'll make a brief reference to Exhibit 74, headed "Lucky Friday Extension Sales made by—"

The Court: Just a moment. With respect to Exhibit 74, Exhibit 74 is merely a compilation by the [499] witness. The jury is not bound by that compilation, and has a right to make its own compilation if it wishes. It can use that compilation as an aid to the jury if it desires. If the compilation differs from what the exhibits show, the jury are to disregard the compilation. It's just a measuring stick that you can use if you please. If you come to the conclusion there's a mistake in the measuring stick, don't use it.

Mr. Stocking: This is to indicate Lucky Friday Extension sales made by Helen Allen to E. J. Gibson & Company beginning with July 2, 1946, and running through December 28, 1946, a total of 265,000 shares disposed of at various prices ranging from 31 cents a share down, total dollars \$41,908.84.

Q. (By Mr. Stocking): On that exhibit, Miss

(Testimony of Ruth Nolting.)

Nolting, that year date of 1946 at the head of the exhibit carries through for the entire exhibit?

A. Yes.

Q. So that the last date is December 28, 1946, is that correct? A. Yes, that's right.

(Whereupon, Gibson checks to Helen Jorgenson were marked Plaintiff's Exhibit No. 75 for identification.)

Q. Now, handing you Plaintiff's 75, can you identify that in [500] connection with the Helen Jorgenson account, Plaintiff's 71?

A. These are the four checks in payment of Helen Jorgenson's account.

Mr. Stocking: We'll offer in evidence the plaintiff's 71 and plaintiff's 75.

Mr. Etter: Object to both of these exhibits on the grounds previously stated, your Honor.

The Court: I doubt, counsel, if there's been a sufficient identification by this witness as to Helen Jorgenson being the wife of the defendant. I think all she said was she understood that was her maiden name.

Mr. Stocking: We'll connect it up with further evidence, your Honor.

Mr. Etter: We'll stipulate that it's his wife, your Honor.

The Court: You'll stipulate it?

Mr. Etter: Yes, we will.

The Court: Exhibits 71 and 75 admitted; objection overruled.

(Testimony of Ruth Nolting.)

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 71 and 75 for identification were admitted in evidence.)

The Court: It is stipulated that Helen Jorgenson is the maiden name of the wife of the defendant Allen, is [501] that correct?

Mr. Etter: Beg your pardon?

The Court: It is stipulated by the defense that Helen Jorgenson is the maiden name of the wife of the defendant Allen?

Mr. Etter: That's correct, sir.

The Court: All right.

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Now, Exhibit 71 shows only Lucky Friday Extension stock was sold through this account, is that correct? A. Yes.

Q. And these four checks of Exhibit 75 were given in payment for the stock which was sold?

A. That's right.

Q. These are checks of E. J. Gibson Company to Helen Jorgenson, \$2125.00, \$1112.50, \$2100.00, and \$1199.75. The first check is dated November 19, 1945, the second November 21, 1945, the next December 4, 1945, and the last check is undated, but shows that it was—bears a bank stamp of August 1, 1946. From your records could you tell

(Testimony of Ruth Nolting.)

what the date of the issuance of this last check,  
the \$1199.75 check, would have been?

A. July 29, 1946.

(Whereupon, Gibson in and out ledger was  
marked Plaintiff's Exhibit No. 76 for iden-  
tification.) [502]

Q. Handing you Plaintiff's exhibit 76 for iden-  
tification, can you identify that, please?

A. These are the original records of the cer-  
tificate in and out book.

Q. For what stock?

A. For Lucky Friday Extension.

Q. And they're of the E. J. Gibson & Company?

A. Yes.

Q. Do they contain in them, then, the numbers  
of the stock certificates connected with the sales of  
the accounts to which we have just referred?

A. Yes, they do.

Mr. Stocking: We'll offer this in evidence. It's  
for the purpose of being able to trace the stock  
certificate numbers, for Mr. Denney's computation.

Mr. Etter: The defendant makes the same ob-  
jection as to the preceding exhibits, insufficiency  
of identification.

The Court: Let me see that. I'd like to have  
all the testimony of the witness read with respect  
to Exhibit 76.

A. In and out book; certificates coming in are  
all registered in a book, and when they are delivered  
to clients they are registered out of the same book.

(Testimony of Ruth Nolting.)

(Whereupon, the reporter read the preceding questions [503] and answers commencing with the question "Handing you Plaintiff's exhibit 76 for identification, can you identify that, please?" and ending with the answer "Yes, they do.")

The Court: As I understand it, the purpose of these certificates are the basis for testimony by another witness?

Mr. Stocking: That's correct, your Honor, identifying the certificate numbers.

The Court: Well, I do not know that it's necessary that they be admitted. At least at this time I'm going to reserve ruling.

Mr. Stocking: I presume if they're available in the courtroom and have been offered it would be sufficient.

Q. (By Mr. Stocking): Now, referring to Plaintiff's exhibit 1, will you identify those checks, please?

A. These are the checks in payment of the Lucky Friday Extension stock, made to the company.

Q. In connection with the corporation's public offering— A. Yes.

Q. —concerning which E. J. Gibson was an underwriter? A. That's right.

Mr. Stocking: We'll now offer or re-offer Plaintiff's Exhibit 1. Do you want to see these?

Mr. Etter: We'll make the same objection as

(Testimony of Ruth Nolting.)

heretofore [504] made to Plaintiff's exhibit 1, on the ground that it's incompetent, irrelevant and immaterial at this time to prove any allegation set forth in any count of the indictment as against the defendant Allen. At the same time, we don't believe at this time either there's been a proper foundation laid; it doesn't appear at this time in view of the evidence it's material to any issue with regard to the action pending; incompetent, irrelevant and immaterial.

Mr. Stocking: They have previously been identified by Irene Vermillion as having been banked, endorsed and banked into the Extension Company account.

The Court: Exhibit 1 admitted.

Mr. Etter: Exception.

The Court: Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 1 for identification was admitted in evidence.)

Q. (By Mr. Stocking): I hand you Plaintiff's exhibit 13, and ask you if you can identify that?

A. That is a check written to the Pilot Silver Lead Company for E. J. Gibson Company's stock sold as underwriter.

Q. And that was for the entire—

A. Entire 400,000 shares.

Q. —their entire underwriting?

A. Yes. [505]

Q. \$40,000. Now, this is made out to Pilot Silver

(Testimony of Ruth Nolting.)

Lead Company. Was there any such company that you were dealing with at that time?

A. Well, that was the name of the—that was the offering of Pilot Silver Lead Company stock.

Q. Well, now, the correct name is Pilot Silver Lead Mines, Inc.

A. The cashier was probably in a hurry and just wrote Company, because it's awfully hard for the cashier to remember the names of a hundred or so companies, whether it ends in "Inc." or "Co."

Q. But you're positive that's a check to Pilot Silver Lead Mines, Inc.?

A. Yes, that's the only name of that kind around here.

Mr. Stocking: I just wanted to clear that up. We'll offer Exhibit 13.

Mr. Etter: Make the same objection, on the ground that there's no connection shown as between this exhibit and anything material or relevant as it relates to the counts of the indictment concerning the defendant Allen.

The Court: Let me see it.

Mr. Stocking: The exhibit was identified by the banker Kraemer as coming into his bank, and part of it going to the Coeur d'Alene Consolidated Mining Company account, of which Mr. Allen was identified as the president. [506]

The Court: Exhibit 13 is admitted.

Mr. Etter: Exception.

The Court: Objection overruled.

(Testimony of Ruth Nolting.)

(Whereupon, Plaintiff's Exhibit No. 13 for identification was admitted in evidence.)

Q. (By Mr. Stocking): I now show you Plaintiff's Exhibit 31, and ask if you can identify—and 31-a, and ask if you can identify those two exhibits?

A. Two checks to James Gyde.

Q. Yes. Do you recall when—these were issued by E. J. Gibson & Company? A. Yes.

Q. And for what purpose?

A. I think that was part of the stock that we received on the underwriting. I haven't seen the prospectus for a couple of years, but it seems to me that was part of the stock we were allowed to take in addition to the other allotment.

Q. In other words, the Gyde stock was covered by the prospectus? A. Yes.

Q. And would you know how many shares of stock that would be for, at the price you were paying for the stock?

A. I think it was ten cents, wasn't it? [507]

Q. Yes.

A. That would be 145,000 shares. I think that's right.

Q. Yes, it was 10 cents net to the company.

A. Yes.

Mr. Stocking: We'll offer in evidence 31 and 31-a.

Mr. Etter: I'm going to object to the admission of these two exhibits on the grounds previously

(Testimony of Ruth Nolting.)

stated, and with the further statement that the testimony of Mr. Gyde did not indicate that these two exhibits are in any way—or did not connect up in any way these two exhibits with the defendant Allen. He specifically stated that what transaction he had was with Keane, that the statements were made by Keane, that the checks or money or whatever was concerned was handled by Keane, and that at this time there's no proper foundation laid to prove any count of the charge laid in the indictment against the defendant Allen; incompetent, irrelevant and immaterial.

Mr. Stocking: The exhibit 31, Mr. Kraemer, the banker, testified \$5,000 of exhibit 31 went in to purchase this \$25,000 cashier's check, and into the account of Coeur d'Alene Consolidated. Exhibit 31-a, Mr. Gyde as to exhibit 31-a and 31 both, Mr. Gyde testified that the arrangement as to the turning back of his stock and how much compensation he would get was made by both the defendant Allen and the defendant Keane. In any event, [508] Gyde's transactions with the defendant Keane would make this admissible, under our theory.

The Court: The objection is overruled; Exhibits 31 and 31-a admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 31 and 31-a for identification were admitted in evidence.)

(Testimony of Ruth Nolting.)

Mr. Stocking: You may cross-examine.

### Cross-Examination

By Mr. Etter:

Q. Miss Nolting, did you talk with any individual prior to the organization of the Lucky Friday about its organization or underwriting?

A. No.

Q. That was done by Mr. Gibson, I believe, was it not?

A. Well, Mr. Gibson had very little to do with it. Elmer Johnston handled all our legal end of it, and the prospectus.

Q. But I mean the question of the underwriting, the discussion with any of the people representing this company was done by Mr. Gibson?

A. It was probably done by Mr. Gibson and myself, but there was very little—there was several underwritings coming up at this time, and we took them on as they came, and Mr. Johnston handled most of that for us.

Q. And that would be true likewise of the Pilot?

A. Yes.

Q. You never had any discussion yourself with Mr. Allen about Lucky Friday Extension?

A. No.

Q. Or Pilot? A. No.

Q. Mr. Allen has been an account of yours for a great number of years?

A. I believe so, since about 1939 or 1940, something like that.

(Testimony of Ruth Nolting.)

Q. And you've been employed and were employed by Mr. Gibson's company at that time and since, Miss Nolting? A. Yes.

The Court: Do I understand the witness is still employed by E. J. Gibson & Company?

Q. Yes, your Honor, except that E. J. Gibson has sold to—

A. I am not employed there now. I have no connection with the company now, but you said "since"; I thought you meant since 1939.

Q. That's correct, but am I correct in saying that Mr. Gibson sold his company to Hogle and Company? A. Yes.

Q. And that is the same company that he owned for years?

A. He sold his active business, but not the corporation.

Q. And are you still employed by Hogle & Company? [510] A. Yes.

Q. And Mr. Allen was a client of Mr. Gibson's brokerage business for a great number of years while you were employed by him?

A. Yes.

Q. But you never had any discussion with him about Pilot or Lucky either one? A. No.

Q. At its organization or later on?

A. Not that I recall.

(Whereupon, promissory note Allen to Chelde, 2/15/46, for \$10,000, was marked Defendant's Exhibit "D" for identification.)

(Testimony of Ruth Nolting.)

Q. Miss Nolting, handing you Defendant's "D" for identification, would you just tell me if you recognize that instrument?

A. That's a \$10,000 note.

Q. And do you recognize the writing on the back? A. Yes.

Q. I'll ask you at this time, is that your signature which appears thereon, Miss Nolting?

A. Yes.

Q. You've been associated in this capacity as an employee of brokerage houses for a great number of years, have you not, Miss Nolting? [511]

A. Yes.

Q. And I think you were, what was it, the manager, weren't you, of Mr. Gibson's business the past few years?

A. Well, no, I wasn't the manager. Mr. Gibson had a coronary in 1945, early in the year, and he was in the hospital and under nurse's care most of the year, and I took over a lot of his duties at the time.

Q. And you're well acquainted with practices in the brokerage business, I would assume?

A. Yes.

Q. Do you know, Miss Nolting, whether in your experience it's a usual or an unusual thing to use persons or names other than your own on your brokerage account?

A. Just how do you mean, on trading under other people's names?

(Testimony of Ruth Nolting.)

Q. Yes.

A. Well, a great many men do it when they don't want their wives to know they have an account.

Q. That's right, and is it an unusual or a usual thing to deal in street stocks in trading in the brokerage business?

A. They used to do it a great deal more than now, because so many people have lost certificates through assessment sales by not having their names registered with the company, that we made it a practice the last few years I [512] was with the corporation to transfer all clients' stocks to their names, or tried to, but there are a great many street traders.

Q. And customarily the past few years, as you say, it has been a usual thing to do trading back and forth in street stock?

A. Local people do; out of town clients we almost invariably transferred.

Q. The purpose, of course, in transferring and sending it in to the corporation for transfer is to prevent the sale of stocks, assessment sale for delinquency in not paying the assessment?

A. That's right.

Q. And many of these mining companies operating throughout the Inland Empire and in the Coeur d'Alene district are assessable companies?

A. The majority are, yes.

Q. So it's been your practice to advise that those

(Testimony of Ruth Nolting.)

transfers be made, rather than carried in other names? A. That's right.

Q. But there is nothing unusual, there hasn't been the past few years, about carrying stock in street names? A. No, there hasn't been.

Mr. Etter: That's all. [513]

#### Redirect Examination

By Mr. Stocking:

Q. When you speak of stock in a street certificate you mean where the stock is carried in the name of a nominee of the brokerage house?

A. No, not necessarily. There are stock certificates that have been floating around for fifteen years that have never been registered outside of the original stockholder. When a company is non-assessable and isn't paying a dividend, some people don't think it's necessary to pay the amount of money, there's usually a dollar or so registration fees and tax and so forth; they just take it as it is and carry it in their box in that street form. The signature has been endorsed and guaranteed by a broker or a bank, and is negotiable.

Q. That's what I meant, it's usually guaranteed by a broker or bank?

A. Yes, or if it's the signature of a company, and the nominee is known, it isn't even necessary to have the guarantee.

Mr. Stocking: I see. That's all.

(Whereupon, there being no further questions, the witness was excused.)

The Court: There will be a ten minute recess.

(Short recess.)

(All parties present as before, and the trial was [514] resumed.)

### IVA COMINI

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Iva Comini.

Q. Where do you reside?

A. Samuels Hotel—oh, Wallace.

Q. Wallace, Idaho? A. Wallace, Idaho.

Q. What is your business?

A. Desk clerk at the Samuels Hotel.

Q. And how long have you been occupied by the Samuels Hotel?

A. Well, I was there for two years, and then I was gone a year and eight months, and I've been back there three months.

Q. Referring to August, 1945, were you there at that time?

A. You'll have to speak a little louder. I'm getting a little deaf.

Q. In August of 1945, were you employed at the hotel at that time? A. Yes.

(Testimony of Iva Comini.)

(Whereupon, register sheets, Samuels Hotel, were marked Plaintiff's Exhibit No. 77 for identification.) [515]

Q. I'll hand you Plaintiff's identification number 77, and ask you to look at that and state what that is. What is that? What are those two sheets?

A. These are register sheets.

Q. What do they show?

A. They show when a person registered in the hotel, what date, what room they occupy during their stay.

Q. Does that identification 77 show the registration of the defendant J. A. Allen—of one J. A. Allen—

Mr. Emigh: Just a minute. We'll object that the exhibit will be the best evidence. We ask that the exhibit be identified as to the keeping of that exhibit and so forth, and then it's for the court to determine whether or not it purports even to show such a thing, and not for this witness to testify what her conclusions are as to what the register shows.

The Court: Overruled.

\* \* \*

Q. (By Mr. Erickson): Will you state whether or not the name of a J. A. Allen appears upon that register? A. Yes, sir, it does.

Q. And for what date?

A. August 6, 1945.

(Testimony of Iva Comini.)

Q. Is that the registration that the hotel guest signs when he enters the hotel?

A. Yes, sir, it is.

Q. Does it show any other registration for a J. A. Allen for a later date in August, 1945?

A. I can only find one here, on August 6. Yes, here's one, August 27.

Mr. Erickson: I offer 77 in evidence.

Mr. Emigh: To which exhibit, may it please the Court, the defendant objects on the ground and for the reason the same is not properly identified, and for the second reason that the same is incompetent, irrelevant and immaterial to prove or tend to prove by impeachment [517] or otherwise any issue in this case.

The Court: Has there been sufficient identification of this registration signature as being that of the defendant?

Mr. Erickson: Perhaps not. I should like to ask the witness.

Q. (By Mr. Erickson): Do you know the signature of J. A. Allen? A. Yes, I do.

Q. Do you know the J. A. Allen in the courtroom? A. Yes, sir.

Q. Is the signature that appears on that hotel register the signature of the J. A. Allen in the courtroom? Answer. A. Yes, sir, I do.

Q. Is it or is it not the signature?

A. Yes, sir, it is.

Mr. Emigh: We still object on the ground it is

(Testimony of Iva Comini.)

not properly identified.

The Court: Exhibit 77 is admitted. Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 77 for identification was admitted in evidence.)

Mr. Erickson: This exhibit shows the registration of J. A. Allen, it's a regular hotel register, for August 6, 1945, in the Samuels Hotel, and shows "J. A. Allen, City, time 60/61" and the number after that is 6158, and [518] on a later date is the hotel register for August 27, 1945, and about the ninth line shows J. A. Allen signed that register again.

(Whereupon, reference book, Samuels Hotel, was marked Plaintiff's Exhibit No. 78 for identification.)

Q. (By Mr. Erickson): I'll now hand you Plaintiff's identification 78, and ask you to state what that is, Mrs. Comini?

A. These sheets are written up every night; we take those register sheets and the clerk writes the person's name on this, the date they came in, and their room number, and it's also used for checking them out of their rooms; it shows the date they come in and the date they're checked out.

Q. Are those official records of the Samuels Hotel at Wallace? A. That's right.

Q. And do you know that they are official records of that hotel? A. Yes, sir.

(Testimony of Iva Comini.)

Q. They show the departure as well as the entrance of each guest in the hotel? A. Yes.

Q. And that record is a part of the permanent records of the hotel? A. That's correct.

Q. Does that—well, I'll offer—first I think I'd better ask another question; did you prepare this yourself?

A. No, the night clerk prepares those.

Q. Are you familiar with them?

A. Yes, I am.

Q. And they are the official records of the hotel?

A. Yes, sir, they are.

Q. Does this record show the entrance and leaving of J. A. Allen from the Samuels Hotel on August 27 and August 6, 1945?

A. I'll have to look at it; I can't tell you.

Q. Well, you look at it to make sure.

Mr. Emigh: Before you answer that I want to make an objection. We'll object to the question on the grounds that the exhibit is the best evidence, and the permission of the witness to testify from the exhibit before it is admitted in evidence is prejudicial error, and the exhibit so far is incompetent, irrelevant and immaterial.

The Court: If she answers the question as put—

A. Came in August 27, and checked out August 29.

The Court: Just a moment. That's stricken. Would you read the question, please, Mr. Taylor?

(Testimony of Iva Comini.)

(Whereupon, the reporter read the question, as follows: "Does this record show the entrance and leaving of J. A. Allen from the Samuels Hotel on August 27 and [520] August 6, 1945?")

The Court: All she needs to say is yes or no. If it shows it, say yes; if it doesn't show it, say no.

Mr. Emigh: Exception. I take it my objection is—

The Court: You may have an exception to that. You may read the question, Mr. Taylor, to the witness, and she may answer yes or no.

(Whereupon, the reporter again read the last previous question.)

A. Yes, it does.

Mr. Erickson: I offer, then, the exhibit.

Mr. Emigh: The document is objected to on the ground and for the reason the same is not properly identified, it is incompetent, irrelevant and immaterial to any purpose in this case, and may I have a moment to examine it, your Honor? We have never seen it.

The Court: Surely.

Mr. Emigh: My objection has been made to this exhibit.

The Court: The situation of this proffered exhibit of course is somewhat different from 77, the register signed by the defendant, under the witness' testimony. While not testified directly, by

(Testimony of Iva Comini.)

implication at least this was kept in the regular order of business of the hotel. Now, assume that instead of you wishing to [521] keep this out, that Mr. Allen wanted this in; would you think this was admissible evidence if Mr. Allen were offering it?

Mr. Emigh: I don't think it's properly identified.

The Court: On what basis is it not properly identified?

Mr. Emigh: I think it's got to be shown that it's kept by her in the ordinary course of business at or near the time the transaction occurred, not a transcript from another record which is not in evidence.

The Court: Is it your position that in Federal Court the particular individual who makes the entry in each instance has to be in the courtroom?

Mr. Emigh: I say it has to be that individual or someone who is keeping the books in the ordinary course of business under the direction of that individual.

The Court: That once was the rule in state court, but I'm very doubtful that that has been the rule in Federal Court for some time, counsel, under the statute. However, I'll reserve ruling on this exhibit. If the government wishes to further identify it, it can, or it can leave it as it is. Exhibit 78 for identification, ruling will be reserved.

Q. (By Mr. Erickson): I think my last question was somewhat confusing, in that I combined

(Testimony of Iva Comini.)

the entrance dates and the [522] leaving dates. I will ask you if there is an entrance date and a leaving date for the earliest visit in August, and if so, give that.

A. Well, he checked in on the 6th, checked out on the 10th.

Q. And for the later date in August?

A. Checked in on the 27th, and checked out on the 30th, August 30; is that what you asked me?

Q. Yes, that's correct. Now, Mrs. Comini, I notice that these lists are kept alphabetically, that is, all the guests are listed "A" whose surnames begin with "A." Can you explain how these records are kept by the Samuels Hotel?

A. They have a ledger book that starts out A, B, C, D, and they have a file card. As a guest checks in we write their name on a file card, and those file cards are all written up on these sheets, and then they're put back in the box, and when they check out that card is taken out and filed, and checked out on this sheet alphabetically.

Q. Is that identification, Plaintiff's identification 78, made from the original cards that are kept at the desk of the Samuels Hotel?

A. That's right.

Q. And are the daily cards destroyed?

A. Yes, sir, they are.

Q. And these are the only permanent records?

A. The permanent record is your register sheet.

Q. Yes, in addition to the register sheet, are

(Testimony of Iva Comini.)

those the only permanent records that the hotel keeps? A. Yes, sir.

Mr. Erickson: I'll renew the offer of 78.

The Court: Exhibit 78 is offered; admitted.

Mr. Emigh: Exception.

The Court: Whatever objection there is is overruled.

(Whereupon, Plaintiff's Exhibit No. 78 for identification was admitted in evidence.)

Mr. Emigh: No cross-examination.

(Whereupon, there being no further questions, the witness was excused.)

### AUDREY MORPHEW

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Erickson:

Q. Will you state your name to the court and jury, please? A. Audrey Morphew.

Q. And where do you reside, Mrs. Morphew?

A. West 2521 Rowan.

Q. Are you employed at the present time?

A. No, I'm not.

Q. What was your former occupation, Mrs. Morphew?

A. I was bookkeeper at LaVigne and Company.

Q. At LaVigne and Company; who are they?

(Testimony of Audrey Morphew.)

A. Edwin LaVigne and Company is a broker office.

Q. Where are they located?

A. In the Radio Central Building.

Q. Have they been a stock brokerage house in Spokane for a number of years?

A. Yes, twenty-five years.

Q. How long were you employed by LaVigne and Company? A. Eight years.

Q. And what did your duties consist of?

A. Oh, at first, bookkeeping, shorthand, everything, office general work, until the last I just supervised.

Q. Did you have charge of records relating to the sale of Pilot and Lucky Friday Extension stock?

A. Yes, sir, I did.

Q. Did LaVigne and Company make any public offerings or portions of public offerings of Lucky Friday Extension and Pilot Silver Lead Company stock? A. Yes, they did.

Q. I'll hand you Plaintiff's identification number 2, Mrs. Morphew, and ask you to state what those are?

A. These are checks we sent to the Lucky Friday Mining Company in payment for stock that we sold.

The Court: Just a moment; does the jury get clearly what the witness says? [525]

Mr. Erickson: You'll have to speak up so all the jurors can hear you, Mrs. Morphew.

(Testimony of Audrey Morphew.)

Q. (By Mr. Erickson): Did you total these checks or do you know how much they total there?

A. No, I don't know the total amount of the checks.

Q. I'll hand you Plaintiff's identification 12 and ask you to state what those are, what number 12 consists of?

A. These are checks that we sent to the Pilot Mining Company in payment of stock that we sold.

Q. These are checks by your brokerage house, in both instances, to these different mining companies? A. That's right.

Mr. Erickson: I offer 2 and 12 at this time.

Mr. Etter: To which we object at this time as being incompetent, irrelevant and immaterial, not proving or going to prove any issue in this case as made out in any count of the indictment as against the defendant Allen, no proof at this time that there's any proper foundation for their introduction, no connection shown at all between them and anything alleged in the indictment and the defendant Allen.

The Court: Let me see them.

Mr. Erickson: These were checks that Irene Vermillion identified during her testimony as being deposited to the accounts of these two companies respectively.

The Court: Objections overruled.

Mr. Etter: Exception.

The Court: Exhibits 2 and 12 admitted.

(Testimony of Audrey Morphew.)

(Whereupon, Plaintiff's Exhibits No. 2 and 12 for identification were admitted in evidence.)

Q. (By Mr. Erickson): Mrs. Morphew, I'll hand you Plaintiff's identification 21 and ask you to state what identification 21 consists of.

A. These are letters that come back with the stock from the Pilot Silver Lead Mines.

Q. Who were those letters received from?

A. From the Pilot Silver Lead Mines.

Q. Were they received by you in the course of mail? A. Yes, they were.

Q. And who are they signed by?

A. Irene Vermillion.

Q. Did you act pursuant to the instructions contained in those letters? A. Yes, I did.

Mr. Erickson: I offer 21 at this time.

Mr. Etter: To which the same objection is made on the grounds stated in the last objection.

The Court: Objection overruled.

Mr. Etter: Exception. [527]

The Court: Exhibit 21 admitted.

(Whereupon, Plaintiff's Exhibit No. 21 for identification was admitted in evidence.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's Exhibit 52, Mrs. Morphew, which has already been received in evidence, and ask you to state whether or not the letters, consisting of letters on Lucky Friday Extension Mining Company station-

(Testimony of Audrey Morphew.)

every signed by Glynn D. Evans were received by you, and how they were received by you?

A. These letters were received by us through the mail, with the stocks.

Q. They were received in Spokane, Washington, or elsewhere?

A. Yes, in Spokane, Washington.

Q. On Plaintiff's Exhibit 21, the second letter, which is dated June 8, 1946, at Wallace, Idaho, when was that received by you, according to your recollection? A. June 12.

Q. How do you fix that date?

A. It's fixed up in the corner of the letter.

The Court: What date, '45 or '46?

Q. '46. A. 1946.

Q. Where is it?

A. The yellow letter; this is their copy.

Q. I'm referring you to a carbon copy of the letter, and [528] that is the receipt mark you just spoke about? A. Yes, it is.

Q. I'll hand you Plaintiff's Exhibits 68 and 69, and ask you what those are?

A. These are prospectuses for the Pilot Silver Lead Mines and the Lucky Friday Extension that went out when we took orders for the stocks.

Q. Now, how did you use those prospectuses, Mrs. Morphew?

A. We mailed them out to our customers, our mailing list.

Q. And you mailed them out to all your customers, or just portions of your customers?

(Testimony of Audrey Morphew.)

A. I think it was all of them.

Q. How many shares of Lucky Friday Extension stock did your firm handle?

A. I don't recall what it was.

Q. But it was only a limited amount?

A. Yes.

Q. And the same with Pilot?

A. That's right.

Mr. Erickson: That's all; you may cross-examine.

#### Cross-Examination

By Mr. Etter:

Q. Do you know the defendant Allen?

A. No, I don't.

Q. Did you ever have any dealings with him during the time that you handled the issue of the Extension and the Pilot, [529] Mrs. Morphew?

A. No, I didn't.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

#### BEN REDFIELD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Erickson:

Q. Will you state your name to the court and jury, please? A. Ben Redfield.

Q. And where do you reside, Mrs. Redfield; where do you live? A. In Spokane.

(Testimony of Ben Redfield.)

Q. And what is your business?

A. Brokerage business.

Q. In the stock brokerage? A. Yes, sir.

Q. Brokerage of mining stocks?

A. Yes, sir.

Q. How long have you been engaged in the brokerage business in the city of Spokane?

A. First started in 1925.

Q. You operate your own brokerage firm at the present time? A. Yes, sir.

Q. And that is located in the Radio Central Building? A. Yes, sir. [530]

Q. In the city of Spokane? A. Yes, sir.

Q. Mr. Redfield, did you handle an issue of Pilot Silver Lead Mines, Inc., stock? A. Yes, sir.

Q. And do you recall how many shares of that stock your brokerage firm handled?

A. I underwrote 100,000 shares.

Q. And what did you sell that stock for?

A. Twelve and a half cents.

Q. And were you furnished prospectuses—

A. Yes, sir.

Q. —by the company? A. Yes, sir.

Q. And what did you do with those prospectuses?

A. They were mailed and given to prospective purchasers.

Q. And I will ask you, referring to Plaintiff's identification 11, ask you to state what identification 11 is?

(Testimony of Ben Redfield.)

A. It's a check drawn by me to the Pilot Silver Lead Company for \$9,750.00.

Q. And what is the date of that check?

A. June 5, 1946.

Q. And what is the second check?

A. The second check is dated June 11, 1946, and drawn by me to the Pilot Silver Lead Company for \$250.00. [531]

Q. And the two checks make \$10,000?

A. Yes, sir.

Q. And represent 100,000 shares of Pilot stock?

A. That's right.

Q. And you sold this stock to the public for twelve and a half cents and remitted ten cents to the company, pursuant to your agreement?

A. Yes, sir.

Mr. Erickson: I offer 11.

Mr. Etter: The same reasons for objecting to this as have been previously stated in the other objections.

The Court: Similar ruling.

Mr. Etter: Exception.

The Court: Exhibit 11 admitted.

(Whereupon, Plaintiff's Exhibit No. 11 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Mr. Redfield, I'll hand you Plaintiff's identification 20, and ask you to state what that is?

A. This is a letter from the Pilot Silver Lead

(Testimony of Ben Redfield.)

Company that accompanied the last 2500 shares which I sent that \$250.00 check for, thereby completing delivery of 100,000 shares.

Q. Who is that letter signed by?

A. By Pilot Silver Lead Mines, by Irene Vermillion.

Q. And was that letter received by you in Spokane, Washington? A. Yes, sir. [532]

Q. In your office in the Radio Central Building?

A. Yes, sir.

Q. And how was it received?

A. Received by mail.

Mr. Erickson: That's all; you may examine. First I want to offer Plaintiff's identification 20 in evidence.

Mr. Etter: If I may repeat the objection, your Honor, on the same grounds, to save time and expedite the matter.

The Court: Let me see it. Exhibit 20 admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 20 for identification was admitted in evidence.)

Mr. Erickson: You may cross-examine.

#### Cross-Examination

By Mr. Etter:

Q. Mr. Redfield, you handled about I think you said 100,000 shares as an underwriter on the Pilot Silver Lead Mines, Inc.? A. Yes, sir.

Q. Did you have some discussions about the

(Testimony of Ben Redfield.)

handling of that 100,000 shares prior to the time that you received it and sold it to your customers?

A. Yes, I think so, yes.

Q. Who did you discuss anything pertaining to that issue with, Mr. Redfield? [533]

A. I believe it was Elmer Johnston, primarily.

Q. Anybody else that you recall?

A. Perhaps Mr. Gibson.

Q. Mr. Gibson. Anybody else?

A. I don't think of anyone else.

Q. Do you know James Allen, the defendant?

A. Yes, sir.

Q. Did you ever have any discussion with Allen about this issue? A. No, sir.

Q. Did you ever discuss with Allen anything relating at all to the Pilot Silver Lead Mines during its promotion, organization and sale of original issue? A. I think not.

Q. You think not?

A. I don't recall of any.

Q. Have you had business dealings with Mr. Allen during that period of time?

A. No, sir, I don't believe I've ever had any direct business dealings with Allen.

Q. Has he ever been a client of your firm on anything that you can recall?

A. He was when I was with Gibson & Company, but not my own.

Q. But there was no discussion you ever had

(Testimony of Ben Redfield.)

with regard to Pilot with him at any time? [534]

A. I don't recall any.

Q. Was there any mention made of Mr. Allen in the Pilot organization by Mr. Johnston in his discussion with you?

A. No, I don't believe so.

Q. Or by Mr. Gibson? A. No.

Mr. Etter: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

### JERRY T. O'BRIEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Jerry T. O'Brien.

Q. And where do you reside, Mr. O'Brien?

A. Hayden Lake, Idaho.

Q. Prior to your residence there where did you reside? A. Wallace, Idaho.

Q. And what was your business connection at Wallace, Idaho, when you resided there?

A. I was in the brokerage business, Pennaluna and Company.

Q. And for what period of time?

A. From January, '43, to July, '47.

(Testimony of Jerry T. O'Brien.)

Q. Are you familiar with the Pilot Silver Lead Mines, Inc., [535] and Lucky Friday Extension Mining Company public offerings which were made in 1945 and 1946? A. Yes.

Q. I hand you Plaintiff's Exhibit 3, and ask you if you can identify this bunch of checks.

A. Yes.

Q: What were those checks, and what were they issued for?

A. These are checks issued for stock on that promotion of the Lucky Friday Extension.

Q. And whose checks are they?

A. Whose signature?

Q. Well, whose checks?

A. The Pennaluna and Company.

Q. And whose signature is that?

A. That's my wife, Mrs. O'Brien, Z. M. O'Brien.

Q. I hand you Exhibit 10 for identification, and ask you to identify those checks, please. Can you identify those checks? A. Yes, sir.

Q. And what are they?

A. They're for purchase of Pilot Silver mining stock.

Q. Speak a little louder, will you please, Mr. O'Brien? The jurors way down at this end have to hear you.

A. Purchasing Pilot Silver Mining stock.

Q. In connection with the— [536]

A. With the promotion.

Q. —with the Pilot's public offering of stock

(Testimony of Jerry T. O'Brien.)  
in '46? A. That's right.

Q. And those were issued by your company, Pennaluna & Company? A. Yes.

Q. They also bear your wife's signature?

A. Some of them, and some from Earl M. Smith, who was the bookkeeper there.

Q. He was an employee of yours? A. Yes.

Q. And your wife was also an employee?

A. Yes.

Mr. Stocking: We'll offer in evidence exhibits 3 and 10.

Mr. Etter: We'll object to the admission of these exhibits, specifically Plaintiff's 10 and Plaintiff's 3, on the ground that they're incompetent, irrelevant and immaterial; do not serve in any way to connect the defendant Allen with any allegation or charge laid in any count of the indictment; improper foundation at this time; no showing of any privity to the defendant thus far testified.

The Court: Let me see them. Exhibits 3 and 10 admitted, objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 3 and 10 for identification were [537] admitted in evidence.)

(Whereupon, O'Brien Company in and out ledger, Extension stock, was marked Plaintiff's Exhibit No. 79 for identification.)

Q. (By Mr. Stocking): Mr. O'Brien, I'll hand you Plaintiff's Exhibit 79 and ask you if you can

(Testimony of Jerry T. O'Brien.)

identify that as one of the records of Pennaluna and Company?

The Court: Is that an identification, or admitted.

Q. For identification, yes. A. Yes.

Q. What is that record?

A. This is what we call our in and out book on the stock certificates; it gives the stock certificate number, the name it's in, and who it was delivered to.

Q. And what stock does that cover?

A. Lucky Friday Extension.

Mr. Stocking: I'll not offer this, if the Court please. I'm not offering this; it's just for identification for purposes of tracing stock certificates by Mr. Denney.

Q. (By Mr. Stocking): Mr. O'Brien, you obtained your certificates in the Pilot and the Extension at the time you gave them the underwriting money by personal delivery, is that correct?

A. Personal delivery, yes. [538]

Q. Because the offices of the company were both in Wallace? A. That's right.

Mr. Stocking: That's all.

#### Cross-Examination

By Mr. Etter:

Q. Did you negotiate an underwriting agreement with Mr. Grismer in respect to the handling of a portion of the stock, Mr. O'Brien?

(Testimony of Jerry T. O'Brien.)

A. Yes, it was with Mr. Grismer.

Q. It was Mr. Grismer. Did you negotiate any of the underwriting agreement with Mr. Allen?

A. No.

Q. Ever talk with Mr. Allen about the organization or underwriting agreement of Pilot prior to the time you took the issue and sold it?

A. No.

Q. You were in Wallace, Idaho, at that time, were you not? A. Yes.

Q. And, of course, closely associated with the brokerage business, operating one, isn't that so?

A. Yes.

Q. You knew Mr. Keane, did you not, well?

A. Yes.

Q. Did he have an office or did one of his companies have an office with you at that time, do you remember? A. With me? No. [539]

Q. No; I was wondering, did Independence have any desk space in your company at that time?

A. No.

Q. But you did know Mr. Keane?

A. Yes.

Q. And Allen, as you say, never discussed this with you? A. No.

Mr. Etter: That's all.

Mr. Stocking: No further questions.

(Whereupon, there being no further questions, the witness was excused.)

## ELMER JOHNSTON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Elmer Johnston.

Q. And where do you reside?

A. Spokane, Washington.

Q. What is your occupation or profession?

A. Attorney at Law.

Q. How long have you been practicing in Spokane? A. Since 1935.

Q. For how long have you been admitted to practice in any court? A. Since 1925. [540]

Q. And prior to 1935 where did you practice?

A. In Shoshone County, Idaho; Wallace and Kellogg.

Q. Are you acquainted with the Lucky Friday Extension Mining Company and the Pilot Silver Lead Mines, Inc., those two corporations?

A. Yes, sir.

Q. Were you employed by those corporations to do some work? A. Yes, sir.

Q. What was the nature of that employment, and when was it?

A. In about April, 1945, I was employed to register an issue of stock for the Lucky Friday Extension Mining Company with the Securities & Exchange Commission, that is, to file it; not register it, but file it under a regulation.

(Testimony of Elmer Johnston.)

Q. It was an unregistered issue, is that correct?

A. It was an unregistered issue; it was offered or to be offered under an exemption regulation, and I was employed to do that work.

Q. That was as to the Extension Company, you say?

A. Yes, sir, Lucky Friday Extension Mining Company.

Q. And were you similarly employed to do work for the Pilot Silver Lead Mines, Inc.?

A. Yes, sir. About a year later, something like that, I was employed to do this same thing with the Pilot Silver Lead Mines, Inc.

Q. Do you know the defendant James Allen?

A. Yes, sir.

Q. And how long have you known him?

A. For a number of years.

Q. Approximately how many?

A. Oh, I'd say twenty, probably.

Q. And do you know the defendants named in the indictment with Mr. Allen, Clayton Keane and Joseph Grismer? A. Yes, sir.

Q. How long have you known those defendants?

A. Why, about fifteen years. I got acquainted with them when I was practicing law in Shoshone County, about 1930, I'd say.

Q. When did you first hear of the corporation by the name of the Lucky Friday Extension Mining Company, or when was such a corporation or the

(Testimony of Elmer Johnston.)

organization of such a corporation first discussed with you, and by whom?

A. Mr. Keane and Mr. Allen met me in the hotel at Wallace sometime in May, I believe it was, 1945, at the time I was just finishing up filing the Hunter Creek Mining Company case under Regulation A, and they asked me if I'd be interested in doing the same thing for the Lucky Friday Extension Mining Company.

Q. What do you mean, doing the same thing?

A. Preparing that company for—preparing an issue of stock by that company for public sale under Regulation A of the [542] Securities and Exchange Commission.

Q. What did such preparation involve, in addition to the filing with the Securities and Exchange Commission?      A. Pardon me?

Q. I say, what does it involve, in addition to the filing with the Securities and Exchange Commission?

A. The preparation of that filing includes a fairly accurate analysis of all the conditions of the company and its property, and the way I handle those filings, I prepare a prospectus. This prospectus is not required by law, but is filed by me as a matter of policy, and that requires a rather extensive inquiry into the affairs of the company and also a pretty close knowledge of the whole corporate set-up.

(Testimony of Elmer Johnston.)

Q. Does such an offering also involve compliance with state laws?

A. Under the laws of Idaho no company engaged in metalliferous mining is required to file on that, under that state, but in Washington it is required, yes, sir, and I undertook to do that work at the same time.

Q. And you had done that work for the Hunter Creek Mining Company just previous to this conversation, is that it?

A. Yes, sir, I just finished a case, and I had finished several others before that.

Q. What was the substance of this discussion that you had [543] with Mr. Keane and Mr. Allen?

A. We met in the lobby of the hotel, and they informed me that they were operating under some arrangement in Montana, a mining property, but they had become interested in the Mullan district, and Mr. Keane said he had organized the Lucky Friday Extension Mining Company, and that it comprised a group of claims lying just to the west of the then quite prominent Lucky Friday Mine, and we sat down, I was very willing to assume the employment, very glad to get it, and we sat down and talked over the whole affairs of the company. Mr. Keane and Mr. Allen were present, and we talked over the size of the company, and I believe that I required them to amend the charter to be sure that it was non-assessable, and we discussed the entire set-up. They had worked out the plans and

(Testimony of Elmer Johnston.)

gave them to me. At that time Mr. Keane told me that Mr. Allen had been under some sort of a civil injunction—

Mr. Etter: By the way, I don't want to interrupt, but was Mr. Allen present when Mr. Keane told you this?

A. Yes, they were both present; and that they intended to develop several properties up there, the Lucky Friday Extension was only one of several that they had in mind and that Mr. Allen would have no active part in the handling of any projects until the injunction had expired.

Q. A three-year limitation from the date of the Injunction, [544] is that correct?

A. Yes, sir, it was a three-year injunction, and it was about half or two-thirds over at that time, as I understand it, as I recall it. Mr. Keane brought the question up. I knew nothing about it, and he advised me that that would be Allen's position in the matter.

Q. Now, was there some immediate negotiations between the Hunter Creek and the Big Friday, that's the Lucky Friday Silver Mining Company, I believe, and the Lucky Friday Extension Company with regard to the lowering of the shaft in a joint venture?

A. That was the basis of the project, as I recall it now, that the Big Friday, as we call the company, had worked out an agreement according to what Mr. Keane advised me, that would provide that this

(Testimony of Elmer Johnston.)

new company would contribute a portion of the money to develop the shaft that would be used by both companies, and the purpose of the project as I understand it was for both Friday companies to work together to drive this shaft down for the joint use of both of them.

Q. And what about the, is it the Hunter Creek, that also entered into this agreement?

A. Later on, after it became public knowledge that these two companies had entered this joint agreement, then the Hunter Creek Company became interested in it, and sought [545] to join in with the other two companies to get the benefit of the work for its property also.

Q. Did you participate in any of those negotiations either with respect to the Hunter Creek or the Extension?

A. I participated in the one in which the Hunter Creek was involved.

Q. You've been the Hunter Creek's attorney for some time, is that right? A. Yes, sir.

Q. Who is the principal head of the Hunter Creek Company? A. Mr. C. O. Dunlop.

Q. And you have been associated with him and his companies for a number of years?

A. Yes.

Q. Do you have office space together?

A. Yes, we do.

Q. In connection with those negotiations, with whom did you negotiate? Who participated in the

(Testimony of Elmer Johnston.)

negotiations on behalf of the Extension Company?

A. Well, as I recall, there was Mr. Horning, Mr. Allen, Mr. Keane, and Mr. Dunlop and myself.

Q. And contracts were drawn and signed?

A. Yes, sir.

Q. Now, did you then undertake to prepare a letter of notification for filing, such as you've described? [546] A. Yes, sir.

Q. And from whom did you get information in connection with the prospectus that you were preparing?

A. I got that from Mr. Keane, Mr. Allen, Mr. Grismer, and Mr. Arthur Lakes, the engineer that Mr. Keane told me would be in charge of the operation.

Q. What type of information was it necessary to get together?

A. It was a new company, and how much stock would be used for acquiring property, how much for promotion, how much for attorneys' fees, what the offering price would be, what was the basis of this offering, what would be done with the money, what kind of a development program would be carried on, and what engineering and geological data was available to justify the offering, and other necessary material facts that I thought would properly present the question.

Q. Do you know who made the determination as to how much stock would be issued as the promotional stock?

(Testimony of Elmer Johnston.)

A. No, I don't believe I do. I know that the information came from those three sources; it would be hard for me to allocate which one authorized it or authenticated it.

Q. That is the three sources you've just mentioned, Mr. Keane and Mr. Allen and Mr. Grismer?

A. Yes.

Q. And with whom did you have the discussion as to what your [547] compensation would be for your services?

A. I talked it over with Mr. Keane that evening, that day, on the Lucky Friday Company, and the Pilot I think I talked that with Mr. Grismer, as I recall it, and I'm not sure whether Mr. Allen was present at that time or not.

Q. What arrangements were made for your compensation?

A. I was to get—Mr. Keane said the attorneys' fees would be 500,000 shares, this had all been arranged beforehand, and I asked for ten per cent of that, or 50,000 for me, and 25,000 for office space, they had no office space, no Washington office, and a company filing a statutory statement here had to have some office, so I suggested it would be proper to allow at least 25,000 shares for that purpose, so it was agreed that 75,000 out of 500,000 would be allocated to me.

Q. Was there some cash consideration to be paid also?

(Testimony of Elmer Johnston.)

A. Yes, \$1,000 attorney's fees, I believe, to the best of my recollection.

Q. And who paid that attorney's fee?

A. Mr. Keane paid me that attorney's fee, I believe.

(Whereupon, copy letter Johnston to Keane, 7/24/45, was marked Plaintiff's Exhibit No. 80 for identification.)

Q. Now, when Lucky Friday Extension stock was issued, how was your 75,000 shares issued to you, what was the transaction? [548]

A. Will you state that again, please?

Q. I say, when it came to the issuance of your 75,000 shares which was the agreed price for your attorney's fees and the use of your office as a Washington office, how was that stock issued to you; what was the arrangement?

A. To the best of my recollection—

Q. Well, just a moment; I'll have you identify exhibit 80 for the purpose of refreshing your recollection; what is that exhibit, Mr. Johnston?

A. This is the letter I wrote to Mr. Keane.

Q. That's a duplicate original of a letter you wrote to Mr. Keane? A. Yes, sir.

Q. On or about what date?

A. July 24, 1945.

Q. Now, referring to that, does that refresh your recollection as to the arrangements which you made?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. And what were those arrangements, and who advised you of this arrangement?

A. As I recall, I think I had lunch with Mr. Allen one day, and he suggested that Keane had asked him to ask me if I had any objection to some of his stock being issued in my name.

Q. When you say "his" are you referring to—

A. Keane's stock.

Q. Keane's stock, some of the 500,000?

A. Yes.

Q. The 500,000 shares, as I understand it, was to be issued for attorneys' fees, and were you and Mr. Keane the only attorneys involved?

A. Yes, sir.

Q. So this would be a portion other than the 75,000 shares which was to come to you?

A. Yes, sir. Under the arrangement Mr. Keane was entitled to 425,000 shares out of the 500,000, and I was entitled to a total of 75,000, and he apparently desired to have it issued in smaller blocks, so shortly after that he mailed me certificates in 25,000 denominations, and I endorsed all of them back to Mr. Keane except the three that I retained.

Q. Referring to your memo, or I mean your letter, exhibit 80, can you give the numbers of the stock certificates which were involved?

A. Certificate number 16 for 200,000.

Q. That was a certificate that was issued to you?

A. Issued in my name and endorsed and sent back for cancellation. I retained certificates 19, 20 and 21.

(Testimony of Elmer Johnston.)

Q. What was issued out of certificate number 16, the 200,000 certificate? [550]

A. I think all of the other twenty-fives were taken out of that 200,000.

Q. That would be eight?

A. Eight twenty-fives were taken out of the 200, and the 200 was cancelled.

Q. The eight certificates for 25,000 shares each?

A. Yes, sir.

Q. And have you those numbers in mind?

A. There's 22, for twenty-five; 23 for twenty-five; 24 for twenty-five; 25 for twenty-five, and 26 for twenty-five, all returned back to Mr. Keane.

Q. Those are five of the eight, that were returned? A. Yes, sir.

Q. And before you returned them did you endorse them so that they would be transferable?

A. Yes, sir.

Q. And you sent those back to Clayton Keane?

A. Yes, sir. Since the stock was all his stock anyhow, I could see no objection, if he wanted it broken up, in doing it.

(Whereupon, Extension documents filed with

S.E.C. were marked Plaintiff's Exhibit No. 81 for identification.)

Q. I hand you Plaintiff's Exhibit 81 for identification, and ask you if you can identify the papers which appear in [551] that file?

A. Yes, I can.

Q. What is that material, Mr. Johnston?

(Testimony of Elmer Johnston.)

A. That is the material filed through my office by the Lucky Friday Extension Mining Company in support of its application to make a public sale of its shares under Regulation A of the general rules and regulations of the Securities Act of 1933.

Q. And where was that filed?

A. Filed in the Seattle office of the Securities Commission.

Q. That's the Securities and Exchange Commission?

A. Yes, sir, the Securities and Exchange Commission, Seattle, Washington.

Q. And this material all went through your office before it was filed, or was looked over by you?

A. Yes, sir.

Q. And does it also contain the prospectus material as well as the letter of notification?

A. Yes, sir.

Q. Now, with regard to the Pilot Silver Lead Mines, Inc., when were you first employed by that corporation?

A. I can't exactly state, but I believe it was about the first of the year 1946 that Mr. Grismer came to my office and asked me if I would take care of that property and look after the filing of its statutory statement and [552] offering data, and Mr. Grismer owned the claims of this company.

Q. Before I go any farther with the Pilot, there was a second offering made by the Extension, was there not?      A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. That was covered in this letter of notification which you have just identified, 81?

A. Yes, sir.

Q. And the first offering covered how much stock?

A. I'd have to refresh my recollection.

The Court: This is of the Extension?

Q. Of the Extension, yes.

A. 1,500,000 shares.

Q. And at what price?

A. At twelve and a half cents per share.

Q. There had been one filing contained in there, was there not, a previous filing where you had set a price at the market, and then you amended that in the Lucky Friday Extension before any offering was made?

A. It's my understanding that the market for this stock after the first million shares was offered started to go up, and we reserved the right in the 500,000 share block of the first offering to sell it at market, and it raised a considerable legal question with the federal government as to the propriety of such proceedings, and during the time [553] that we were working it out, the price went up to around 30 cents, and we were offering it out at twelve and a half cents, that is, we had originally offered the first block of a million shares, so when we had concluded the triple contract between the three companies and threw them all together into one project as far as the shaft was concerned, it was the con-

(Testimony of Elmer Johnston.)

sensus of opinion that our stock was worth at least as much as the market, or more, and the market being around 25 or 28 cents, we filed this second offering at about 31 or 32 cents, as I recall it now, and withdrew all stock at market.

Q. And that was to cover the first 500,000 shares, but was amended to cover 300,000, isn't that correct?

A. Yes, sir; in other words, the final sale of the second supplement offering of the Lucky Friday X Company was limited to 300,000 shares, I believe.

Q. And can you recall with whom these discussions were concerning this second offering, and who determined that price?

A. As I said before, the contracts were all agreed to by the principals in the month of September, I believe it was, '45, wherein they all finally agreed how they'd go down with this shaft. Of course, the price of that second offering I believe was more or less worked out by me through the brokers, because at that time we had a public [554] buying power, and stock was selling around 30 cents, and it was just a legal question as to what we could do, and any questions that I had along that line of course I'd refer to Mr. Keane, and I would get a response from either him or a telephone call from Mr. Allen or something from Grismer. I don't know exactly who told me what, but anyhow, it was agreed that that price was satisfactory.

(Testimony of Elmer Johnston.)

Q. Now, Exhibit 81 for identification shows that the first filing in connection with the first offering was made July 9, 1945, is that correct?

A. Yes, sir.

Q. And the second offering that you have referred to was covered by filing made January 9, 1946, and an amended filing January 17, 1946, is that correct? A. Yes, sir.

Q. And there was also a supplement added to the prospectus explaining the triple contract?

A. Yes, sir.

Q. The three way contract? A. Yes, sir.

Q. Now, was it about that time in January, 1946, then, or sometime in January you say that you first had a discussion about the Pilot Company?

A. Yes, sir.

Q. And did you then begin preparations for a prospectus and a [555] letter of notification for that company? A. Yes, sir.

Q. And what preparations were necessary there?

A. Similar to the other, the one of the Lucky Friday X Company. It was not required by law to file a prospectus, and Grismer wanted me to just short-cut it and file a letter of notification and take the simple procedure that you could take and that he'd been advised by some other attorneys he could take, but I wouldn't do it that way; I insisted on the regular procedure, and called for a prospectus giving all the material facts, and I set about to prepare that, and inquired of every source I could think of to get

(Testimony of Elmer Johnston.)

that information together, and Mr. Lakes was the engineer; he prepared complete data, maps and geological information, engineering reports, and Mr. Gyde did some of the legal work, and I just probed around until I got everything that I thought I needed, then I prepared a skeleton of it.

Q. Now, in connection with the preparation of the Pilot prospects, was there some discussion about having some photographs taken? A. Yes, sir.

Q. With whom was that discussion?

A. Frankly, I told them that I'd like to see some pictures taken, and everybody agreed that it was a good idea. [556]

Q. Now, by "everybody," does that include the people you've mentioned before as being interested in this company? A. Yes, sir.

Q. Mr. Keane and Mr. Grismer and the defendant Allen? A. Yes, sir.

Q. Who arranged for the taking of these pictures? A. I did.

\* \* \*

(Whereupon, at 4:30 o'clock p.m., the Court took a recess in this cause until Friday, June 10, 1949, at 10 o'clock a.m.)

Spokane, Washington, Friday, June 10, 1949, 10 o'clock a.m. (Fifth day of trial.)

(All parties present as before, and the trial was resumed.)

(Testimony of Elmer Johnston.)

**ELMER JOHNSTON**

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

**Direct Examination**

(Continued)

By Mr. Stocking:

Q. My last question, Mr. Johnston, concerned your arranging to have airplane photographs taken of the Pilot property [557] for use in the prospectus, was that correct? A. Yes, sir.

(Whereupon, check Allen to Johnston 2/26/46 was marked Plaintiff's Exhibit 8-i-1 for identification:)

(Whereupon, check Allen to Johnston 5/14/46 was marked Plaintiff's Exhibit 8-l-1 for identification.)

(Whereupon, letter Johnston to Keane 5/4/46 was marked Plaintiff's Exhibit No. 82 for identification.)

(Whereupon, copy annual statement Extension Company was marked Plaintiff's Exhibit No. 83 for identification.)

(Whereupon, letter Johnston to Extension Co. 4/29/46 was marked Plaintiff's Exhibit No. 83-a for identification.)

(Whereupon, letter Johnston to Keane 4/5/46 was marked Plaintiff's Exhibit No. 84 for identification.)

(Testimony of Elmer Johnston.)

(Whereupon, stock certificates in Extension Co. endorsed by Johnston were marked Plaintiff's Exhibit No. 50-a for identification.)

Q. Now, I'll hand you what has been marked Plaintiff's Exhibit 8-i-1 for identification, taken from the exhibit which was previously identified as 8-i, Montana Leasing Company records, and ask you if you can identify that check in connection with the payment of the airplane photographs?

A. Yes, I can. I think that is the check that Mr. Allen gave me to pay a portion of the cost of that reconnaissance [558] flight.

Q. Was that notation on the check to the best of your recollection at the time you received the check, this notation in the left hand corner?

A. Yes, sir.

Q. And whose signature is that on the check?

A. It is my notation on the face indicating what it's for, and my signature on the back.

Q. That is your writing there?

A. That is my writing, yes, sir.

Q. And whose signature is on the check?

A. Mr. J. A. Allen.

Mr. Stocking: We'll offer 8-i-1.

The Court: Let me see that. How does this come to be 8-i-1?

Mr. Stocking: Taken from Exhibit 8-i.

The Clerk: Originally exhibit 8. The whole folder was marked Exhibit 8, and each bundle of monthly checks was marked with a letter.

(Testimony of Elmer Johnston.)

The Court: All right.

Mr. Etter: I have no objection.

Mr. Stocking: This is a Montana Leasing Company check—

The Court: Just a moment; is there any objection?

Mr. Etter: There's no objection, your Honor.

The Court: Exhibit 8-i-1 is admitted.

(Whereupon, Plaintiff's Exhibit No. 8-i-1 for identification was admitted in evidence.)

Mr. Stocking: This is a Montana Leasing Company check signed by James A. Allen, February 26, 1946, to Elmer Johnston, and bearing on the lower left hand corner the initials "P.S.L., \$200.00"; Mr. Johnston's notation "Photo Airplane Trip, Libby."

Q. (By Mr. Stocking): Did those initials "P.S.L." have any significance to you on the check, Mr. Johnston?

A. No, not necessarily. They were made by the maker of the check.

Q. You didn't make them? A. No, sir.

Q. Was there any company that you were working for that had the initials "P.S.L." at that time?

A. The Pilot Silver Lead was the company directly involved in a portion of this matter.

Q. I'll hand you Plaintiff's exhibits 8-i-1 and 82 for identification, and ask you if you can identify both of those exhibits? A. Yes, sir, I can.

(Testimony of Elmer Johnston.)

Q. And what is Plaintiff's exhibit 82; who prepared that?

A. It's a letter to Mr. F. C. Keane dated May 4, 1946, by me.

Q. And does this Exhibit 8-1-1 relate to the subject matter [560] of that letter?

A. Yes, sir, 8-1-1 is a check for \$1,000 signed by Mr. Allen and delivered to me in response to my letter of May 4, 1946.

Mr. Stocking: We'll offer 82 and 8-1-1 in evidence, please.

Mr. Etter: No objection.

The Court: Let me see them, please. Exhibits 8-1-1 and 82 admitted.

(Whereupon, Plaintiff's Exhibits No. 8-1-1 and 82 for identification were admitted in evidence.)

(Whereupon, underwriting agreement Gibson and Extension Co. was marked Plaintiff's Exhibit No. 85 for identification.)

Mr. Stocking: Exhibit 82, a letter on Elmer Johnston's stationery, May 4, 1946, to Mr. F. C. Keane, attorney at law, Wallace, Idaho. (Whereupon, Mr. Stocking read Exhibit 82 to the jury.) Exhibit 8-1-1 is a check, Montana Leasing Company check signed by J. A. Allen, May 14, 1946, pay to the order of Elmer Johnston \$1,000, and bearing Elmer Johnston's endorsement.

Q. (By Mr. Stocking): Mr. Johnston, this check 8-1-1, then, was in payment for your services

(Testimony of Elmer Johnston.)

in connection with the Pilot Silver Lead Mines, Inc.? A. Yes, sir.

Q. And that check was delivered to you by whom? [561]

A. I think it was delivered by Mr. Allen.

Q. Can you identify Plaintiff's exhibit 85?

A. Yes, sir.

Q. And what is that exhibit?

A. That's an underwriting agreement between the Lucky Friday Extension Mining Company and E. J. Gibson & Company of this city.

Q. What is the date of that agreement?

A. July 20, 1945.

Q. And there is also attached to the agreement a letter?

A. A letter dated November 8, 1945, addressed to that company, asking them to sign this exhibit, this contract.

Q. And was this agreement prepared by you?

A. Yes, sir, I think it was, yes, sir.

Q. This was in connection with the Extension offering?

A. Yes, sir. It was prepared by me. Yes, sir, that's my agreement.

Q. Was the actual agreement between the brokers made on or about the 20th of July, 1945, the date shown on the agreement, the actual underwriting undertaken about that time?

A. Yes, sir, they had all made verbal commit-

(Testimony of Elmer Johnston.)  
ments, but I insisted that they reduce them to writing.

Q. And is that the reason this was dated as of that date?

A. Yes, sir; it was a few days after the offering came out.

Mr. Stocking: We'll offer this in [562] evidence in respect to one of the overt acts. Just one question that I think——

The Court: Just a moment, please.

Mr. Stocking: May I ask one question.

The Court: Allow counsel to look at the agreement and letter.

Mr. Etter: Did you want to ask another question?

Mr. Stocking: Yes, I would like to.

Q. (By Mr. Stocking): You were acting in your capacity as an attorney for the Lucky Friday Extension Mining Company at the time you prepared this agreement? A. Yes, sir.

Mr. Etter: We'll object, your Honor, to the admission of exhibit 85 on the grounds that it's incompetent, irrelevant and immaterial to prove any issue made in the case thus far relative to any allegation or charge in the indictment affecting the defendant Allen, on the ground that it clearly appears upon its face and on the testimony adduced so far that the defendant Allen is not privy to anything which appears in the exhibit which is here attached, and on the further ground that from the

(Testimony of Elmer Johnston.)

testimony of the witness it appears that the witness was counsel for the company in question, indicating a relationship of privilege, and we object to it on that further ground also. [563]

The Court: Let me see it. Ruling reserved.

Q. (By Mr. Stocking): Mr. Johnston, I'll hand you Plaintiff's exhibit 50-a, which have been identified as Lucky Friday Extension Mining Company certificates taken from exhibit 50, consisting of certificates 1178, 1179, 1181, 1182, 1183, 1184 and 1185, and ask you if you can identify the certificates in this exhibit 50-a? A. I can.

Q. And do they bear your endorsement on the back? A. They do.

Q. And these certificates were issued to whom?

A. To me, Elmer E. Johnston.

Q. Now, referring to the date of the issuance of the certificates, can you tell me under what circumstances were these certificates issued to you and endorsed by you, and where?

A. As I recall, in Wallace on one of my trips in the middle of October, 1945, Mr. Allen and I were having dinner or lunch, and someone from his office or Mr. Keane's office came to us with these certificates in my name that had apparently been transferred out of some of the "twenty-five" series that I testified to yesterday. The stock was all of course the property of Mr. Keane, but it was transferred in my name in 5,000 blocks, and of course the stock could not be sold without my endorse-

(Testimony of Elmer Johnston.)

ment on the [564] certificate, so at the suggestion of Mr. Allen, as I now recall, I endorsed them, since it was done at his suggestion and at Keane's suggestion.

Q. You mean originally the stock had been endorsed back by you in the 25,000 blocks at Mr. Allen and Mr. Keane's suggestion, is that correct?

A. Yes, sir.

Q. But this transaction took place with Mr. Allen, or did Mr. Keane participate, too?

A. No, just Mr. Allen and I alone in the restaurant when this stock came down, I thought from Keane's office, but it was suggested by Mr. Allen to me that I could endorse these certificates to accommodate the boys. Now, these certificates, I mean this stock, actually belonged to Mr. Keane.

Q. As far as you knew?

A. Yes. I disclaimed no interest in it whatsoever, because it was not a part of the stock allocated to me.

Mr. Stocking: We offer in evidence Exhibit 50-a.

A. I wish also to say that there was nothing legally wrong with endorsing the stock in my own name.

Mr. Emigh: Just a moment; we object to this as not responsive to any question, and ask that it be stricken.

The Court: Stricken; volunteered.

Mr. Etter: I'm going to object to the [565] offer of this exhibit, your Honor, on the ground that at

(Testimony of Elmer Johnston.)

the present time in the present state of the record it is incompetent, irrelevant and immaterial to prove any issue as laid in any charge or allegation in the indictment as against the defendant Allen, and the further ground that on its face it appears to be, and from the testimony undoubtedly is attorneys' stock indicated in the prospectus, and any testimony thus far indicates it as being eligible for sale; on the further ground that there's no privy shown at all between the stock itself and the defendant Allen, and on the basis of the testimony thus far, if the exhibit is admissible on some other ground it now seems premature.

The Court: Let me see it.

Mr. Stocking: It's our theory that any of this promotion stock with which Mr. Allen is identified is one of the factors in the case to be considered.

The Court: I may say this, counsel; the certificates themselves are admissible. There's one matter I'd like to talk with counsel about; I'm going to excuse the jury.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: I am concerned, counsel, with these notes which are attached to the certificates. The testimony [566] of this witness discusses certain certificates. They're clearly admissible under his theory he says Mr. Allen requested him to endorse

(Testimony of Elmer Johnston.)

them. I do not know that Mr. Etter's objections embraced these notes.

Mr. Etter: Well, I'll include the notes and embrace them anyway, your Honor, just for the record, at your suggestion.

The Court: No, I'm not suggesting it.

Mr. Etter: Well, at your observation; I'll take advantage of it.

Mr. Stocking: Which notes do you have reference to?

The Court: These little notes. There's been no reference, as I remember it, to these little notes.

Mr. Stocking: Those are the Federal stamps which appear on all cancelled certificates.

The Court: I realize there are certain things that do appear, but because I know it, am I to admit it for the jury? You may wish somebody here to explain those. Mr. Etter having ultimately, stimulated by my observation, objected to those, I think that I should keep them out until explanation is given of them. The jury may come in.

Mr. Emigh: It appears from the record, your Honor, that this is attorneys' stock issued and included in the prospectus. Now, when the public that was buying it [567] advised in the prospectus that a certain amount of the stock is to be issued as attorneys' stock, then the public is not deceived by what is done with that stock afterward. You can give it to your friends, you can trade with it back and forth, you can do anything you want with it.

(Testimony of Elmer Johnston.)

The public is not defrauded when they know that so much of the issue goes to the attorneys' stock, and we think this goes to the very meat of one of the charges, and to admit it would be prejudicial and lay the foundation that the jury would draw the belief from that that the charge in the indictment has a material effect. We believe that the purchasing public was put on notice that this stock and other stock had been issued for attorneys' fees, and that there was nobody deceived by the fact of what was done with that stock after it was issued, whether it was turned back to the company or given to someone else or what was done with it, and we feel that when this kind of testimony goes in it's highly prejudicial to the defendant.

The Court: Well, counsel, the theory of the government's case, and apparently the—well, I'll say the theory of the government's case is that Mr. Allen actually was a very interested participant in the affairs of each of these two companies and that he was concealing his interest. The theory Mr. Allen has suggested on [568] cross-examination is that Mr. Allen wasn't interested in these companies, that he had an interest in a general project, and because of that he did do some talking about the general project, but that he was not at all concerned individually with these two companies. This testimony of Mr. Johnston is something for the jury to have to decide whether the government's theory is correct—

(Testimony of Elmer Johnston.)

Mr. Emigh: Your Honor—

The Court: —or Mr. Allen's claim is correct.

Mr. Emigh: Your Honor, if that evidence is to be confined to that purpose it should be admitted solely for that purpose.

The Court: I'm not saying that it should be confined to that purpose. That's one reason for admitting it.

Mr. Emigh: Well, we think it's very prejudicial unless it is confined to that purpose.

The Court: After all the evidence is in the Court may be then in a position to say some things about certain exhibits, but at the present time the government says that Mr. Allen was a very important actual concealed party with respect to the two companies. Apparently, as I say, Mr. Allen's defense is that he didn't have anything to do with either company, and was just merely a sort of a disinterested person, kindly disposed; that he [569] made some statements about the general mining business because he did have an interest in the welfare of the general mining business. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: Exhibit 50-a for identification has been offered, consisting of several stock certificates, and attached to some of these several stock certificates are some small sheets of paper with certain writing or printing thereon. There has been no

(Testimony of Elmer Johnston.)

testimony that I recollect giving any explanation of such attached papers or notes. The certificates themselves, if there was not attached these notations, would be clearly admissible. Whether the notations would be admissible on presentation of evidence is not now to be determined. Under the circumstances, Exhibit 50-a in the condition the exhibit is, with such attached notes, is rejected.

(Whereupon, letter Johnston to Keane, 5/8/46 was marked Plaintiff's Exhibit No. 86 for identification.)

(Whereupon, letter Johnston to Extension Co., 1/11/46, was marked Plaintiff's Exhibit No. 87 for identification.)

Q. (By Mr. Stocking): Referring to Plaintiff's proposed exhibit 87, can you identify that exhibit?

A. Yes, sir.

Q. What is it?

A. It is a letter by me to the Lucky Friday Extension Mining Company dated January 11, 1946.

Q. With particular reference to the fourth paragraph of the exhibit, does that refresh your recollection as to any transaction you may have had with Mr. Allen?

A. Yes, I think I can explain that, counsel, that I referred to the necessity of filing an amended form S-3-B required by the Securities and Exchange Commission in connection with this proposed offering, and I was reliably informed by

(Testimony of Elmer Johnston.)

someone that Mr. Allen had this form in his possession for delivery to me.

Q. And subsequently was that amended form delivered to you by Mr. Allen?

A. I assume that it was, yes, sir.

Q. Now, I also note that on that Exhibit 87 you have shown that a copy of this letter went to whom?

A. Mr. J. A. Allen of Callahan Consolidated Mining Company, Gyde-Taylor Building, Wallace, Idaho.

Q. Was it your practice to send copies of some of the correspondence in connection with these companies to Mr. Allen?

A. Yes, sir, I sent a copy of this letter manifestly because he was one of the parties I was trying to communicate with, [571] and in order to save writing two letters I sent him a copy, and on other instances I sent him copies of letters in dealing with this company's affairs, when I was attending to the company business.

Q. Had you had any conversation with Mr. Allen regarding the sending of these copies to him?

A. Yes, I'm sure it was suggested to me by him that if I sent copies of letters dealing with material matters, that he would try to render assistance, since his office was right across the hall from Keane's office in the Gyde-Taylor Building, and he also had an office in Spokane, and he was constantly traveling back and forth between these two cities.

(Testimony of Elmer Johnston.)

(Whereupon, letter Johnston to Keane, 3/11/46, was marked Plaintiff's Exhibit No. 88 for identification.)

Q. Now, with reference to Plaintiff's proposed exhibit 88, can you identify that exhibit?

A. Yes, sir.

Q. Well, what is it?

A. It's a letter by me to F. C. Keane, attorney at law, Wallace, Idaho, dated March 11, 1946.

Q. And with reference to the first paragraph of that letter, does that refresh your recollection as to any transaction with Mr. Allen? [572]

A. Yes, sir, it does.

Q. What was that transaction?

A. Mr. Allen about that time left copies of articles of incorporation and other matters in my office in connection with the Pilot Company, that I was commencing to work on.

Q. That was in connection with your preparation of the prospectus?

A. In connection with the preparation of the prospectus of the Pilot Silver Lead Mines Company.

Q. Did Mr. Allen come to your office several times in connection with the preparation of the prospectuses for these two companies?

A. He came to my office, yes, sir, on numerous occasions, because I was handling other work for him, and some of—

Q. As well as this?

(Testimony of Elmer Johnston.)

A. Other work as well as—

Q. This work?

Mr. Etter: I think he should finish the answer.

The Court: Yes, please don't interrupt, Mr. Stocking.

A. I'll re-state that. Yes, Mr. Allen came to my office occasionally in direct connection with the work I was doing on the Pilot and on the Lucky Friday X companies. He also of course came to my office in connection with other matters. [573]

Q. Do you recall the defendant Clayton Keane ever having come to your office?

A. In connection with this matter?

Q. Well, in connection with this matter or in connection with any matter.

A. Not since I moved to Spokane Mr. Keane I don't believe has been in my office, although we used to in Wallace have a good deal of business together, but I saw him in the hotels in Wallace and here in Spokane. He was rather casual in his manner of contacting me.

Q. Now, with reference to telephone conversations, did you ever have any telephone conversations with Mr. Keane when Mr. Allen was in your presence, in your office?

A. Yes, to the best of my recollection, it's been four years ago, on a few occasions or on occasions I called Mr. Keane to verify or talk over some matter that Allen had suggested that I do, and he was present in my office when that took place.

(Testimony of Elmer Johnston.)

Q. And sometimes on those occasions would Mr. Allen also converse with Mr. Keane from your office?

A. I can't exactly remember; he may have.

Q. Now, were these telephone conversations in connection with the work of these two companies?

A. Yes, sir.

Q. Now, showing you Plaintiff's proposed exhibit 84 and [574] Plaintiff's proposed exhibits 83 and 83-a, can you identify those exhibits?

A. Yes, I can.

Q. And what is Exhibit 84?

A. It's a letter addressed from me to F. C. Keane, attorney, dated April 5, 1946, reminding him—

Q. Now, does that exhibit refresh your recollection of any matter that was pending at that time?

A. Yes, sir.

Q. And what was that matter? Was that in connection with the Lucky Friday Extension Mining Company? A. Yes, sir.

Q. And what is Exhibit 83? Can you identify 83-a and 83? A. Yes, sir.

Q. What is Exhibit 83-a?

A. It's a letter dated April 29, 1946, from me to the Lucky Friday Extension Mining Company, Wallace, Idaho, requesting—enclosing form copies of a metalliferous mining company annual statement.

(Testimony of Elmer Johnston.)

Q. And does 83 appear to be one of the copies that had been enclosed? A. Yes, sir.

Q. What was the situation with regard to the filing of this metalliferous mining company annual statement?

A. Under the laws of Washington, we had filed this Lucky [575] Friday Extension Mining Company under the mining act of this state, and the law required the company to file an annual report within—on or before February 15 of the next year after the close of each calendar year, and I received these reports from the department in connection with the Lucky Friday Extension Mining Company, and I was endeavoring to get it filled out and filed. This report is designed to give a fair statement of stock transactions.

Q. Now, that is the identical—or that report which is attached to Exhibit 83-a and marked Exhibit 83 for identification is identical with the annual statement which is contained in defendant's Exhibit A, near the bottom of that file, is that correct? A. Let me look at it. Yes, sir.

Q. And that exhibit, the original of Exhibit 83, which appears in Defendant's Exhibit A, and the copies, were prepared by who and where?

A. They came to me from Wallace.

Q. That is, the signed exhibits came to you from Wallace, but the exhibit itself was prepared where?

A. I don't know; I presume it was prepared in

(Testimony of Elmer Johnston.)

Wallace. It was furnished to me by the company or one of its representatives.

Q. Does your letter of April 29, 1946, what does it indicate with respect to the transmittal of these exhibits? [576]

A. The forms were to be filled out and notarized, and enclose a five dollar filing fee.

Q. And was the exhibit in this form, with the exception of the signatures, at the time that you sent it with your letter of April 29, 1946?

A. No, sir.

Q. What was the difference?

A. It was sent in blank form, with instructions for the company to have the figures made up out of its records.

Q. Was that the information that you gave me when I talked to you about this in my office a few moments ago?

A. Well, I said, Mr. Stocking, that I got the information to fill out this form, I mean the information came to me—

Q. Yes.

A. —from either Mr. Keane, Mr. Allen, or Mr. Grismer.

Q. And didn't you tell me at that time that you had obtained the information and had prepared those forms, filled out these forms?

A. Well, I might have misunderstood you. What I meant is that the information came to me, as near as I can recollect, in this form already put out.

(Testimony of Elmer Johnston.)

Now, if I typed it in my office I have no independent recollection of that.

Q. I see.

A. But the figures themselves, all the information came from that source, either Mr. Allen, Mr. Grismer, or Keane. [577]

Q. And did you have that information at the time you sent these forms up there?

A. No, sir, I don't think so.

Q. That's your best recollection now?

A. Yes, sir.

Q. What was the situation with regard to the time element? That was what I was trying to bring out. By reference to your letters what can you say?

A. Well, in view of the fact that the letter is dated April 29, 1946, and the form was sworn to on May 1, 1946, it would be my information then that I did have the information, the figures, and that I did make the form out myself based upon information that they furnished me.

Q. Was there some concern on your part about getting these filed? A. Yes, sir.

Q. Were they delinquent at this time?

A. Yes, sir.

Q. Had there been already an extension granted?

A. They were delinquent from February 15, and this was May 1.

Q. And there had been one telegraphic extension granted, had there not? A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. As referred, to refresh your recollection, in your letter of April 6? [578]

A. They were definitely delinquent; I was definitely anxious to get it filed, and I wrote these letters to try to get it tended to, and I want to make myself very clear, Mr. Stocking, about the matter that all these figures on this form were furnished me by either Mr. Allen, Mr. Grismer, or Mr. Keane. Now, as to whether I typed it here in Spokane or it was typed in Wallace I don't recollect, but I believe that in view of the date there, that I typed it in my office.

Q. And with regard to your office file, did you examine your office file to determine whether or not there was any letter in that file from either Mr. Keane or Mr. Allen or Mr. Grismer furnishing these figures?

A. No, there isn't.

Q. There was no memo in the file indicating where the information came from?

A. No, sir.

The Court: Is this a reasonably available time for a recess? Any objection? Recess for ten minutes.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Stocking: At this time we'll offer in evidence Plaintiff's proposed exhibits 83, 83-a, 84, 86, 87 and 88.

(Testimony of Elmer Johnston.)

Mr. Etter: We'll make an objection to the [579] admission of each and all of these exhibits, your Honor, on the ground that no proper foundation has yet been laid to connect them in any way with the defendant Allen, and at this time they are incompetent, irrelevant and immaterial; that the letters so far as the defendant Allen is concerned are pure hearsay; that the mere fact that "CC" appears upon one is no proof, and there has been none, of any receipt of the letter or a copy thereof by the defendant Allen to in any way charge him at this time, and likewise—I think that's all.

Mr. Stocking: They're offered on the theory that they're related to these transactions that he has just testified concerning.

The Court: Let me see them. Exhibits 83 and 83-a admitted, objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 87 admitted.

Mr. Etter: Exception.

The Court: Objection overruled. I do not believe I in the present state of the record am justified in admitting Exhibits 84, 86 or 88, and Exhibits 84, 86 and 88 are rejected upon defendant's objections.

(Whereupon, Plaintiff's Exhibits No. 83, 83-a and 87 for identification were admitted in evidence.) [580]

(Whereupon, documents filed with S.E.C. by Pilot Co. were marked Plaintiff's Exhibit No. 89 for identification.)

(Testimony of Elmer Johnston.)

Q. (By Mr. Stocking): Mr. Johnston, can you identify Plaintiff's proposed exhibit 89?

A. Yes, sir.

Q. What is that exhibit?

A. It's the official filing of papers on form S-3-B-1 by the Pilot Silver Lead Mines, Inc., for the sale of a public offering of securities under the general rules and regulations of the Securities Act of 1933.

Q. And who prepared that exhibit?

A. I did.

Q. And the information in there was all prepared by you or under your direction?

A. Yes, sir.

Q. And caused to be filed by you—

A. Yes, sir.

Q. —on behalf of this company?

A. Yes, sir.

Q. And what was the filing date of that letter of notification? A. May 2, 1946.

Mr. Stocking: We'll offer in evidence Exhibit 81, previously identified as the Lucky Friday Extension filing, and Exhibit 89, the Pilot Silver Lead Mines filing. [581]

Mr. Etter: No objection.

The Court: Exhibits 81 and 89 admitted.

(Whereupon, Plaintiff's Exhibits No. 89 and 81 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Mr. Johnston, these fil-

(Testimony of Elmer Johnston.)

ings were made in order to claim an exemption from the full registration provisions of the Securities Act of 1933, is that correct? A. Yes, sir.

Q. And they were being filed under the exempted Regulation A? A. Yes, sir.

Q. Was there ever any registration statement filed for either the Lucky Friday Extension Mining Company or the Pilot Silver Lead Mines, Inc.?

A. No, sir, not that I know.

Q. You were acting as attorney for the company handling that work for the company at all times?

A. Yes, sir.

Q. What other compensation did you get from the Pilot Company in addition to the thousand dollar check which was just recently referred to as an exhibit?

A. 50,000 shares of stock in the company.

Q. And what was done with that stock? Did you retain that stock?

A. It was sold, eventually.

Q. But you retained ownership of all of those shares? [582] A. Yes, sir.

Q. Or distributed them to Mr. Dunlop or some of your associates?

A. Yes, sir, I distributed part of them to Mr. Dunlop and some of the associates who helped prepare the prospectus and helped assist getting this matter filed promptly.

Q. These were people in your office?

(Testimony of Elmer Johnston.)

A. People in my office, and personal friends of mine.

Mr. Stocking: That's all.

Cross-Examination

By Mr. Etter:

Q. Mr. Johnston, I think you said that you've known Mr. Allen for about twenty years?

A. Yes, sir, about that.

Q. You and he were both long-time residents of Idaho, is that so? A. Yes, sir.

Q. And that was when you were first practicing law in Shoshone County that you first met Mr. Allen? A. Yes, sir.

Q. Do you recall what business Mr. Allen was in at that time, Mr. Johnston?

A. In the mercantile and grocery business, I believe.

Q. Mercantile and grocery business?

A. And meat business, yes.

Q. And do you know when Mr. Allen went into the mining business, [583] Mr. Johnston?

A. No, sir, I don't.

Q. You had left up there, had you, and come down here?

A. As I say, I don't know when he went into the business, Mr. Etter. I left there in 1935.

Q. Oh, I see. Did you know that—as a matter of fact, the greater part of your work, I think, Mr. Johnston, is handling mining work of all kinds, isn't that correct? A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. And as a matter of fact your office specializes in that type of work? A. Yes, sir.

Q. And handling matters such as you have testified to on behalf of mining companies, isn't that correct? A. Yes, sir.

Q. And contracts, having to do with final drafts of contracts that may be worked out between mining companies for development? A. Yes.

Q. And joint development projects, possibly, of all kinds? A. Yes, sir.

Q. And the handling of practically all legal matters that pertain to any phase of mining are handled in your office? A. Yes, sir.

Q. And at the present time is there associated in your office [584] a mining company or a number of mining companies, Mr. Johnston?

A. Yes, sir.

Q. For whom you're attorney?

A. Yes, sir.

Q. And could you name those companies for us?

A. Yes, sir; there's the Silver Dollar Mining Company; the Silver Chieftan Company; Hunter Creek Mining Company; Silver Ore Mining Company; a few others that don't amount to much.

Q. And I think you stated that you have done work on and off at numerous times for Mr. Allen?

A. To my best recollection I think I have, over a period of years, yes, sir.

Q. Over a period of years? A. Yes.

Q. And Mr. Allen has consulted you on problems

(Testimony of Elmer Johnston.)

apart from any problems having to do with Lucky Friday Extension and Pilot, has he not?

A. Yes, he has.

Q. He has been interested, you know, in various properties, isn't that so? A. Yes, sir.

Q. You knew that he was interested in the Callahan Consolidated? [585] A. Yes, sir.

Q. You knew likewise that he was interested in the purchase or the acquisition of the Gold Hunter group? A. Yes, sir.

Q. And the Elmore Lou group of claims?

A. Yes, sir.

Q. And likewise in the Lexington properties in Neihart?

A. He told me he was interested in that. I didn't have any knowledge of that except what he told me.

Q. I mean, he's told you?

A. Yes, he told me he was.

Q. And possibly other companies with which he's discussed mutual problems, isn't that so?

A. Yes, sir, including the Hunter Silver Lead Company.

Q. Including Hunter Silver Lead; was that the one that you listed that you had done some work for? A. Yes, sir.

Q. And he did have some interest in the Hunter Silver Lead? A. Yes, sir.

Q. Isn't it a fair assumption that you and Mr. Allen have, over the period of years that you've

(Testimony of Elmer Johnston.)

been acquainted with him, discussed mining problems of all types and descriptions?

A. Yes, sir, many times.

Q. And Mr. Allen has been interested in a variety and [586] numerous ventures in mining, isn't that so? A. Yes, sir.

Q. Now, do you recall, Mr. Johnston, that sometime in the summer of 1945 you and Mr. Allen had several discussions with regard to the Hunter Silver Lead property?

A. We had several discussions with respect to this property, yes, sir. I'm not sure of the date.

Q. You're not sure of the date?

A. No, but we discussed it very thoroughly on several occasions.

Q. He discussed it very thoroughly with you on several occasions, and some of those occasions could have been in the summer or possibly earlier than 1945, would you say that, as your recollection serves?

A. Well, I don't think there were any discussions prior to 1945.

Q. Prior to 1945?

A. It was in the spring of 1945 that this mining activity developed up there and took in a good many properties.

Q. That's correct; during the spring of 1945 there was a tremendous surge, wasn't there, Mr. Johnston, in practically all of those mining properties through the Coeur d'Alenes?

A. Oh, yes, sir.

(Testimony of Elmer Johnston.)

Q. And there were numerous companies formed and there were a [587] number of development projects contemplated and being carried on?

A. Yes, sir.

Q. And in the spring of 1945, I assume, if, as you say, your recollection serves you correctly, Mr. Allen discussed with you probably the Hunter Silver Lead property, or you discussed it with him, I don't know which?

A. I'm sure that in the summer or early summer he discussed with me the Hunter Silver Lead and what he called the Big Hunter property.

Q. And the Big Hunter property?

A. Which was a project that he was thinking about, in which he proposed to put a deep shaft down farther north than our Hunter Creek property, and carry on a big extensive development program there:

Q. He proposed that to you?

A. He talked it over with me. [588]

\* \* \*

Q. (By Mr. Etter): When you talked with Mr. Allen or when he [589] talked with you first about the—did he talk with you about this development that you've mentioned first, or about the Lucky Friday Extension, in relation to time?

A. When we were discussing that three-way contract for the shaft we discussed other shafts and

(Testimony of Elmer Johnston.)

other proposals of all kinds, and at that time Mr. Allen was quite enthused about this so-called Big Hunter project, and we talked at that time, I recall distinctly, in the fall of 1945, when we were negotiating the three-way contract for that shaft work.

Q. And that three-way contract is the one that you testified to on direct examination, Mr. Johnston, is it not, that was concerned with the Hunter Silver Lead, the Lucky Friday Extension, and the so-called Big Friday, lying next to the Lucky Friday Extension, isn't that so?

A. Yes, sir, specifically those three properties.

Q. Specifically those three properties, and those were the three properties particularly that you and Mr. Allen were discussing, isn't that correct, as part of the central development program?

A. I didn't quite understand your question, counsel, but if I may answer by saying that we discussed at that time not only the best way to develop these three properties, but also the possibility of joining others in the venture and locating a shaft at some other place. [590]

Q. I see; in other words, it wasn't just the Lucky Friday Extension and the Big Friday and the Hunter Creek alone, but you talked about other properties at the same time?

A. Well, the Hunter Creek naturally had to decide whether it wanted to go down the Friday shaft or some other shaft, and the Vindicator people—there was all kinds of talk about how to do this job.

(Testimony of Elmer Johnston.)

Q. And that was in connection with the discussions of the Lucky Friday and the Big Friday, isn't that so?

A. Oh, certainly; all phases of sinking were discussed at that time from the standpoint of the companies involved.

\* \* \*

Q. (By Mr. Etter): Did you and Mr. Allen enter into an agreement, [591] tentatively or otherwise, during the summer of 1945 with respect to Mr. Allen doing some representative work for the Hunter Creek people in negotiating this three-way contract you're talking about?

A. No, I don't believe we did.

Q. When did you—did you in the fall discuss that matter with Mr. Allen?

A. Yes, sir. In the fall of 1945 there was so much excitement going on in the district and so much uncertainty as to where and how the Hunter Creek Company and other companies would get together on this matter that it was, I thought, sort of generally agreed that Allen would be a good arbitrator or administrator, the way I recall it, something like that.

Q. You felt that Allen would be a good arbitrator or administrator as between all of the people who were interested in all of the properties?

A. That's right, yes, to settle this question.

Q. And wasn't it your opinion during that time, Mr. Johnston, that that was Allen's position so far

(Testimony of Elmer Johnston.)

as his representation in the Coeur d'Alenes is concerned, as a general arbitrator-administrator between different companies?

A. With respect to this question of where the Hunter Creek Company should go with its shaft, and all the related problems of deep underground development, and in connection [592] with those discussions, he was—

Q. He was?

A. —in my opinion a sort of a conciliator.

Q. That's right. Mr. Allen had had a great deal of experience in that kind of work and was thoroughly familiar with all the problems, you felt?

A. Well, he was well acquainted with all the parties, and yes, well acquainted with the general—he was making a keen study, as a matter of fact, of the whole situation there; yes, that's right.

Q. And Mr. Dunlop, who you represent, and who is the head of several very successful mines, also talked with Mr. Allen, didn't he, about this same thing? A. Yes, sir.

Q. And isn't it true that you people, you and Mr. Dunlop, made an agreement to have Mr. Allen do some work for the Hunter Creek, and in return to pay him in stock for the representation that he gave the company in negotiating this deep development agreement?

A. Yes, I believe that's right, yes, sir.

Q. And Mr. Allen pursuant to that did work for the Hunter Creek, didn't he, Mr. Johnston?

(Testimony of Elmer Johnston.)

A. Yes.

Q. And the problems of the Hunter Creek Company were inextricably tied and dependent upon the same problems as [593] those which affected the Lucky Friday Extension and the Big Friday?

A. Yes, sir.

Q. And you and Mr. Allen throughout the fall of '45 and into '46 had numerous conversations in respect to all of these properties, specifically having reference to the Lucky Friday Extension, the Big Friday, so-called, and the Hunter Creek property, is that not so, had numerous conversations as to the progress of the development program?

A. Oh, yes, we discussed it every time we met.

Q. Every time you met, and isn't it true that many of the problems that were associated likewise with Lucky Friday Extension and the Big Friday were bound up with the problems of the Hunter Creek? A. Oh, yes.

Q. And weren't you interested and Mr. Dunlop and these other people interested just as much in the problems of the Lucky Friday Extension and the Big Friday, because of this program, as you were in the Hunter Creek?

A. Well, no, I wouldn't say we were; we were primarily, of course, handling the Hunter Creek problem.

Q. Of course you were.

A. And we thought that we were very fortunate in getting a deep development program established

(Testimony of Elmer Johnston.)

for this company, and we would be interested in everything that was incidental [594] to that work we were undertaking.

Q. Certainly, and you wanted a smooth operation in any company you associated with, for your own benefit? A. We always want that.

Q. And if there were something that Mr. Allen could do with regard to policy or otherwise in the Little Friday or Big Friday, you wanted him to do it, didn't you? A. Oh, yes, sir.

Q. At any time? A. Yes, sir.

Q. And many times when those problems came up that's exactly what you asked Mr. Allen to do, isn't that right, to do with either of those two companies to eliminate an obstacle to the program?

A. Well, I don't know of any particular problems, counsel, except as I said before, in connection with negotiating the shaft agreement and incidental smooth operations thereunder, but he wasn't delegated as a trouble-shooter or anything like that; I think the incidents were pretty well closed when the shaft contract was signed up.

Q. That was when?

A. In the fall of '45.

Q. Wasn't there further discussion with Mr. Allen following the fall of '45?

A. You mean officially? [595]

Q. Yes, as between—

A. There was discussions with Mr. Allen, general discussions of mining operations, every time we met.

(Testimony of Elmer Johnston.)

Q. That's correct.

A. And we talked about every property in the district—

Q. And when you weren't—pardon me, did you want to finish?

A. And I knew that he was interested in other properties.

Q. And when this three-way contract was completed that you're talking about, isn't it so that then, in conjunction with the contract existing between the Big Friday, the Lucky Friday Extension, and the Hunter Creek, there was further discussion with Mr. Allen with regard to his acquisition of the Gold Hunter property?

A. Yes, there was, because Allen contended for a long time, he may still contend, that he could get the Big Hunter property, buy it; he went to Chicago for that purpose, I understand it, and he brought the subject up many times, to try and interest adjoining properties if he could get them interested in some project up there.

Q. And those adjoining properties included these properties you've told us about that were involved in this three-way agreement, isn't that right, involved those properties?

A. Yes; you know, it was just ordinary conversation; I don't want to say that the board of directors sat down and formally considered any matter, because they were committed [596] to a shaft program, but there was all kinds of talk about it.

(Testimony of Elmer Johnston.)

Q. And Mr. Allen was the central figure?

A. He was doing a lot of it.

Q. Now, in January, 1946, isn't it true that your company, the company you represented, the Hunter Creek Mining Company, gave Mr. Allen 100,000 shares of the Hunter Creek stock for his work and what he'd done in helping negotiate on this deep shaft development with these three companies?

A. Yes, sir.

Q. And do you recall offhand what the certificate numbers were? A. No, sir.

Q. But you do know that Mr. Allen received 100,000 shares from Hunter Creek during the fall of 1945? A. Yes, sir, that's right.

Q. For the work he performed for the company?

A. It was our portion, yes, of the expense for this work, and we felt it was a very fine bargain, and we got a fine deal for what it cost us.

Q. And you knew at the time you paid Mr. Allen the 100,000 that he was also working in the interest of the other two companies, isn't that right, or did you know that?

A. Well, yes, I assumed he was trying to get everybody [597] together; there was repeated rows and fights, and the details had to be thrashed out, and hurriedly, because the time was running short.

Q. And Mr. Allen thrashed them out?

A. Yes, sir, and we drove the shaft down 400 feet, and many other matters of equipment, mill sites, hoisting equipment, many important factors

(Testimony of Elmer Johnston.)

had to be settled, because the companies had to buy new equipment in many instances, on account of us coming into the picture.

Q. And Mr. Allen tended to those matters?

A. No, I don't think he had anything to do with that.

Q. I mean those matters which might have affected his particular part in it?

A. They were discussed and settled.

Q. All right. I would like to hand you Plaintiff's exhibit 81, Mr. Johnston, and direct your attention to a page that appears hereon, and have you look at it for just a minute, and ask you if you're familiar with it?

A. Yes, I am. It's a three page document, but I think I'm fairly familiar with it.

Q. And is that the—would you say a description or condensation, if you want to call it, of the work or the culmination of the agreement or work problems between the Lucky Friday, the Big Friday, and the Hunter Creek? A. Yes, sir. [598]

Q. And would you say that that was the matter upon which Mr. Allen was working for those companies? A. Yes, sir.

Q. And that was the culmination, was it not, of his efforts? A. Yes, sir.

Mr. Etter: With the Court's permission I would like to read this to the jury.

The Court: You may.

(Testimony of Elmer Johnston.)

(Whereupon, Mr. Etter read a portion of Plaintiff's Exhibit 81 to the jury.)

(Whereupon, a memorandum was marked Defendant's Exhibit E for identification.)

Q. Mr. Johnston, I would like to hand you the Defendant's identification E, and ask you if you recognize what that instrument is? Are you able to refresh your memory?

A. It seems like a typewritten memo of some of the things we discussed about July, 1945. I don't know whether it was made in my office or whose office it was made in, but it appears to be a memo. It probably was written in my office.

Q. You've seen the memo before?

A. I believe I have. Those look like my figures on the side there.

Q. And it refers to conversations that you and Mr. Allen were having about the three-way agreement which we just discussed? [599]

A. Well, I don't know what the date is here, I don't know whether that's a correct date, but it's a sort of a memo of some of the things we were discussing that took place during that time.

Q. And those were some of the things, isn't that right, that you wanted Mr. Allen to keep in mind in that negotiation?

A. Well, I'd say I wanted him and everybody else to keep them in mind.

(Testimony of Elmer Johnston.)

Q. This was your position and this was what you people wanted to obtain?

A. I'm not sure about that, counsel, but it's certainly a memo of the things we were talking about.

Q. And you remember the memo distinctly?

A. No, I haven't an independent recollection of this memo, but I remember it contains the items we were discussing.

Q. And you think these are your figures over here?

A. They look like my notations on the side, yes, sir.

Mr. Stocking: No objection.

The Court: Is it offered?

Mr. Etter: I'd like to move that this exhibit be admitted.

The Court: Exhibit E is offered, there's no objection; admitted.

(Whereupon, Defendant's Exhibit E for identification was admitted in evidence.)

Q. (By Mr. Etter): During the time or at about the time, I'll direct your attention to the approximate time that these events were occurring and that you were having these discussions with Mr. Allen, Mr. Johnston, and I'll ask you if at that time Mr. Allen didn't make some mention to you of the fact that he was under temporary civil injunction on behalf of the Securities & Exchange Commission?

(Testimony of Elmer Johnston.)

A. The time he mentioned that to me was when he and I and Keane were talking in the hotel in April or May, 1945.

Q. April or May of 1945?

A. That was the only time that I recall that it was ever brought up.

Q. Well, now, don't you recall that some time later Mr. Allen talked with you about that matter independently of the presence of any other individual, Mr. Johnston? A. He may have.

Q. And didn't he come to you and say that he felt that you had a pretty good working knowledge of S. E. C. regulations and wanted to know whether you could investigate the possibility of accelerating the lifting of the civil injunction, rather than waiting until its automatic expiration, which was sometime in June of 1946?

A. That could have happened, counsel.

Q. And at that time do you recall that you called Mr. James Newton, who was then chief attorney of the Securities & [601] Exchange Commission in Seattle, but who is now regional director of that office, in respect to the matter?

A. I believe I did; I believe I did.

Q. Beg pardon? A. I believe I did.

Q. And isn't it true that during that conversation Mr. Newton in the Securities & Exchange Commission office in Seattle told you that in his best judgment he felt that the civil injunction would have to run its natural course, and that be-

(Testimony of Elmer Johnston.)

fore he could give you any word or assurance one way or the other, he would have to take such a matter up with the offices of the Commission, which were then in Philadelphia, Pennsylvania?

A. Yes, I believe that's right.

Q. And isn't it true that for the services that you rendered him at that time Mr. Allen paid you a fee in regard to that matter, if you recall?

A. No, I don't recall that he did.

Q. You don't recall it? A. No.

Q. But after recollection, would you make the statement that he didn't pay you a fee?

A. No, sir, I would not.

Q. You just don't remember?

A. I don't remember? [602]

Q. Now, these discussions that he had with you, Mr. Johnston, and that you had with him, and that in turn you had with Mr. Newton of the Commission in Seattle, those discussions were all prior to any work which was done on the organization or otherwise of the Lucky Friday Extension and the Pilot companies, isn't that correct?

A. No, I don't think so—I don't recall, counsel.

Q. Well, as a lawyer, Mr. Johnston, would you know of any particular reason that Mr. Allen would ask you to call Mr. Newton of the Commission and inquire about these matters having to do with this civil injunction?

A. The first time I knew that he had an injunction was the time that he brought it up in the

(Testimony of Elmer Johnston.)

hotel. I had no knowledge of it before that at all.

Q. But there had been no promotion and no organization of the Lucky Friday Extension, or there was no working agreement at that time between the Big Friday and the Extension or the Hunter Creek, was there? A. No.

Q. And did Mr. Allen tell you what his purpose was when he talked to you about this civil injunction and asked you to take the matter up with Mr. Newton?

A. Well, as I recall, sometime during that summer of 1945 he talked to me about the matter and wanted to get it lifted.

Q. And why did he say he wanted to get it lifted? [603]

A. So he could take part in the activities of these companies.

Q. Take part within the purview of the Securities & Exchange Commission regulations?

A. Yes.

Q. And you called up and told him, I suppose, what Mr. Newton said? A. Yes, I did.

Q. And what did he say to that?

A. I don't recall.

Q. And you advised him, I suppose, that he couldn't participate in any capacity prohibited by the Commission regulations or by the Securities Act? A. Yes, sir.

Q. You advised him of that matter?

A. Yes, sir.

(Testimony of Elmer Johnston.)

Q. Now, when he came down to talk with you about Lucky Friday Extension was it your opinion as a lawyer well acquainted with these matters that he was acting in any capacity prohibited by the regulations?

A. No, I thought he was acting in good faith.

Q. And you thought he was acting in good faith as to all of the companies?

A. Which I filed papers for, yes, sir.

Q. And when you filed these papers, the prospectuses of the Pilot Silver Lead and the Lucky Friday Extension, you had [604] complete confidence that what you were putting in there was a correct representation as you understood it?

A. At that time, yes, sir.

Q. And your entire experience in the practice of law has been with matters of this kind, haven't they, Mr. Johnston?

A. Yes. In addition to that, I had confidence in Mr. Keane, and there was Mr. Gyde, connected with the company, and Mr. Horning, and I believe Mr. Wayne, there were plenty of lawyers, and their activities were all right there around the Gyde-Taylor Building, and I had no reason to be apprehensive. I figured they understood the law and his position, and they would follow it.

Q. And it was your position, where you stated that Mr. Keane was the dominant participant, as we— A. Principal promoter.

Q. When you filed this prospectus, Plaintiff's exhibit 68, and wherein you made the statement,

(Testimony of Elmer Johnston.)

Mr. Johnston "The company was promoted through Mr. F. C. Keane, and its activities to date have been completely controlled and dominated by him," that was your opinion of the matter?

A. That certainly was, yes, sir.

Q. And he was controlling and dominating it when you filed this, wasn't he?

A. I thought he was.

Q. What made you think he was? [605]

A. Upon his own personal representations to me, the statements of Mr. Grismer, and the activities of getting the thing set up.

Q. All right. Now, the statements that he made to you, what statements did he make to you about it?

A. That he was going to be the one that would run it and look after it.

Q. That he was what?

A. He was going to be the one that would run it and look after it.

Q. And what did Mr. Grismer say about who was going to run it and look after it?

A. He and Mr. Keane.

Q. Did either one of them say Mr. Allen was going to run it? A. No.

Q. Did either one of them say that Mr. Allen was rendering any aid or assistance?

A. They never discussed that with me.

Q. Well, Mr. Grismer told you that Mr. Allen was helping Mr. Grismer?

A. Yes, they were working together.

Q. As a matter of fact, after these first meetings

(Testimony of Elmer Johnston.)

with Keane, he brought Mr. Allen into your office and told you he was?

A. Yes, he did, they were working together. [606]

Q. And at that time, knowing what you knew, and taking into consideration the conversations that you had with Mr. Grismer and Mr. Keane, and the statements of Mr. Keane that he was running the show, or that Mr. Grismer was running the show, considering all that, when Mr. Grismer came in and advised you Mr. Allen was giving him some help did you change your opinion any of who was dominating the company? A. No, sir.

Q. And did you think the work Mr. Allen was doing, or the advice he was giving Mr. Grismer, was such advice or participation that was prohibited by any regulations of the Securities & Exchange Commission that covered it?

A. Not at that time, no.

Q. And did Mr. Keane ever tell you in all of these early negotiations that Mr. Allen had anything to do with incorporating this company?

A. No.

Q. Did he ever tell you that Mr. Allen had anything to do with promoting the company?

A. No.

Q. Did he ever tell you that Allen was going to have anything to do with the stock? A. No.

Q. Or did Mr. Grismer tell you any of those things? [607] A. No.

(Testimony of Elmer Johnston.)

Q. Did Mr. Keane ever talk to you about Mr. Allen's particular participation on behalf of the companies who were generally associated up through that area? Did Mr. Keane ever mention that to you?

A. I didn't quite get the import of that question, counsel.

Q. Well, I kind of forget it myself.

(Whereupon, the reporter read the last previous question.)

A. I don't recall any independent conversations of that kind.

Q. Now, you prepared, did you not, the prospectus of the Lucky Friday Extension Mining Company? A. Yes, sir.

Q. And you and Mr. Keane were the attorneys?

A. Yes, sir.

Q. Did Mr. Keane, as the attorney for the company in conjunction with you, while you were both attorneys for the company, did Mr. Keane tell you that Mr. Allen was promoting this company?

A. No.

Q. And you and Mr. Keane of course worked fairly close on the problems of the company, or did you do most of the work, Mr. Johnston?

A. Well, I did most of it.

Q. Well, Mr. Les Randall of Wallace, Idaho, a certified [608] public accountant, was your auditor, was he not? A. Yes.

Q. Did Mr. Randall ever say anything to you

(Testimony of Elmer Johnston.)

about the participation of Mr. Allen in the promotion or organization of this company?

A. No, he didn't.

Q. And did Mr. Lakes of Spokane, Washington, say anything to you about Mr. Allen participating in any activities prohibited, as they understood it, by the regulations?

A. Mr. Lakes and I never discussed anything except geology and engineering matters.

Q. In other words, he never discussed that with you at all? A. No.

Q. And the statements that were made as you understood them at the time you filed this prospectus were a true representation of the particulars and facts involved in the prospectus?

A. Absolutely, yes, sir.

Q. And as you stated, ordinarily these prospectuses are not required to be filed under this particular type of promotion? A. Yes, sir.

Q. But as you say, it has been your practice to file them anyway.

A. I wanted to publish everything that I could think of that [609] was material, that the stockholder should know before he bought the stock, and I printed it, published it, and broadcast it.

Q. And you as an attorney investigating it and knowing all the facts, put the conclusions that you have put in these two prospectuses?

A. Yes, sir, they're my conclusions.

(Testimony of Elmer Johnston.)

Q. From all the facts?

A. From the facts that I could gather, yes, sir.

\* \* \*

(Whereupon, at 12:05 o'clock p.m. the Court took a recess in this cause until 1:30 o'clock p.m.)

Friday, June 10, 1949, 1:30 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

#### Cross-Examination

(Continued)

By Mr. Etter:

Q. Mr. Johnston, I'm going to hand [611] you the Plaintiff's Exhibit 8-i-1, I believe it is, which you've previously identified as a check that you received from Mr. Allen—

A. Yes, sir.

Q. —with the notation "Photo airplane trip"— A. Yes, sir.

Q. —and I think if I recall correctly your testimony was that that was partial payment for that expense, is that correct? A. Yes, sir.

Q. When you said "partial payment" would you explain, Mr. Johnston, what you meant by that?

A. Well, I think a general set of pictures were taken for use in any future work that would be done, and the photographer was instructed to pho-

(Testimony of Elmer Johnston.)

tograph all that territory around the Mullan district.

Q. Including all of the area that has been discussed here this morning? A. Yes, sir.

Q. The companies that might be prospectively included?

A. Yes, sir. He took a number of pictures.

Q. And that was a particular share of it that was paid by Mr. Allen? A. Yes, sir.

Q. And other companies paid like shares, either larger or [612] smaller, depending on the ultimate cost?

A. I don't recall now what other companies paid, but there were other companies paid a portion.

Q. I might ask you preliminarily, Mr. Johnston, this picture that you're referring to that was taken, that wasn't an ordinary photograph or something like that, was it?

A. No, it was taken by an aerial photographer, a flyer.

Q. That was an aerial picture that was taken of the area? A. Yes, sir.

Q. An airplane and photographer were hired and flew up there to take this picture?

A. Yes, sir, together with the photographer. We hired Libby the photographer with all the necessary equipment.

Q. Taken from the air?

A. Yes, sir, taken from the air.

(Whereupon, aerial photo of area involved was marked Defendant's Exhibit F for identification.)

(Testimony of Elmer Johnston.)

Q. Now, I'm going to hand you Defendant's exhibit marked F, and ask you if you recognize that picture, Mr. Johnston?

A. Yes, I recognize it.

Q. Will you state what picture that is?

A. That is one of the pictures taken of this area.

Q. Is that an aerial picture, Mr. Johnston?

A. This is an aerial photographer's picture, yes, sir.

Q. And you're familiar, are you, Mr. Johnston, with the [613] terrain, generally speaking, in the area covered by that picture? A. Yes, sir.

Q. And would you just generally tell us what mining companies mentioned here are included in that picture for which contribution was made, if you recall?

A. Well, as I said, I don't know who all contributed to the cost, I can't recall that, but I do know that this picture covers the ground embraced in the Big Hunter mining property, the Hunter Creek, the Lucky Friday, the Lucky Friday Extension, a part of the Pilot, Vindicator—

Q. Independence in there?

A. And the Independence, Independence is right out in front, yes, sir, and the town of Mullan, and the Federal Mill at Mullan.

Q. That would include practically what we call the entire dry belt, is that it, there, or the undeveloped area of that belt?

(Testimony of Elmer Johnston.)

A. That's probably a better description.

Q. And this is, as you say, one of the pictures involved? A. Yes, sir.

Mr. Etter: At this time, your Honor, I'd like to move the admission of Defendant's F.

Mr. Stocking: We have no objection.

The Court: Exhibit F admitted, no objection.

(Whereupon, Defendant's Exhibit F for identification was admitted in evidence.)

Q. (By Mr. Etter): Now, Mr. Johnston, during the summer of 1945 were you acquainted with the condition of the local stock exchange as it related to mining stocks and issues thereof, of mining stocks? A. To some extent, yes, sir.

Q. And to what extent, Mr. Johnston?

A. Well, it depends upon what you mean by being "acquainted."

Q. I mean were you interested at that time because of your representation of these mining companies, in the stock exchange, that is, as to the values of mining stocks at that time?

A. I knew that in a general way that stocks were being traded and bought and sold at certain bid and ask prices. I had no independent knowledge of their respective values.

Q. But as values at least on the exchange you had knowledge of that? A. Yes.

Q. As indicated by the exchange? A. Yes.

Q. And would you say that there was a con-

(Testimony of Elmer Johnston.)

siderable activity in the metal market at that time, in stocks being traded on the Standard Stock Exchange, or little activity?

A. There was very much activity. [615]

Q. There was very much activity; in fact, it was one of the periods where the market in Spokane has been the most active in its history, isn't that correct?

A. I believe that's right; I never saw anything like it in my experience.

Q. And you've been acquainted with this thing for many, many years? A. Yes, sir.

Q. And have watched the market quite closely?

A. Yes, sir.

Q. Isn't it true as far as most stocks were concerned there was a terrific demand for all metal stocks, mining stocks?

\* \* \*

A. There was a good strong firm demand, yes, sir.

Q. There was a good strong firm demand. How was that reflected, Mr. Johnston, in the price of the stocks? A. They were bid up daily.

Q. They were bid up daily? A. Yes.

Q. And that was true of Pilot Silver, was it, at the time of the issue of Pilot Silver?

A. Yes, sir.

Q. And that was true of Lucky Friday Extension? A. I believe so.

(Testimony of Elmer Johnston.)

Q. And also true of the Big Friday stock?

A. Yes, sir.

Q. And was it true of not only those stocks, but practically all the mining stocks that were being traded?

A. Yes, sir, there was an upward sweep going on.

Q. A uniform trend in the market?

A. Yes.

Q. That was a condition general to the entire market, and not to separate restricted stocks?

A. Yes, sir.

Mr. Etter: That's all. [617]

#### Redirect Examination

By Mr. Stocking:

Q. In that connection, though, and with respect to these particular stocks, Mr. Johnston, was it a fact that the execution of this contract had some bearing on the rise in price of the Extension stock?

A. Yes, sir, it had a decided effect, in my opinion.

Q. And the fact that they began operations under this contract?

A. Yes, sir. Each stock went up according to the merits or the potential activities at the property, and that was the situation with respect to Friday Extension.

Q. Now, when you were answering Mr. Etter on cross-examination in regard to your opinion as to the legal effect of Mr. Allen's relationship, if any, with these companies, I noticed that you restricted

(Testimony of Elmer Johnston.)

your answer to the opinion at that time, is that correct?      A. Yes, sir.

Q. And now, don't answer this question until—and answer this question yes or no, and don't answer this question until counsel had an opportunity to object, but have any facts come to your attention since that time which would cause you to change your opinion as to the legal effect of Allen's relationship to these companies?

Mr. Etter: I'm going to object to that question, your Honor, as calling for a conclusion and interfering [618] with the province of the jury, and not only that, the question doesn't specify all the facts, but barely asks whether he has certain facts, and it isn't proper, because it pre-supposes that he has without any proof that he knows all the facts that have been brought out or will be brought out in this trial, and he's in no position to testify to that.

The Court: Well, I'm satisfied that if this witness has changed his opinion, that that's not material. I'll sustain the objection. It will be for the jury to determine, after it knows all the facts, what its opinion is.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

## FRANCIS CLAYTON KEANE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Mr. Herman: If your Honor please, may I address the Court?

The Court: You may.

Mr. Herman: Mr. Richard S. Munter and I are counsel of record for Mr. Keane, who has entered a plea of nolo contendere. I would like the Court's permission for myself this afternoon and for Mr. Munter and myself [619] on Monday to be present in court while Mr. Keane is testifying, for the purpose of advising him relative to any questions that may present themselves in connection with his testimony.

The Court: You are permitted to be in attendance.

Mr. Herman: And in that connection may I say to your Honor, because a plea of nolo contendere has been entered I am not nearly so familiar with the facts and the issues in this case as I would have been were I ready for trial, and under the circumstances, should our client conceive that any question was not within the issues or was not proper, may he have the court's permission to confer with me on that?

The Court: I see no reason now why he should not.

Mr. Herman: Very well, your Honor.

The Court: Until the Court may direct otherwise he may have that continuing permission.

(Testimony of Francis Clayton Keane.)

Mr. Herman: Thank you, your Honor.

The Court: You may proceed.

Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. F. C. Keane.

Q. That's Francis Clayton Keane?

A. Clayton Keane is the way that I designate it.

Q. You are one of the defendants named in this indictment? [620] A. I am.

Q. And where do you reside?

A. Wallace, Idaho.

\* \* \*

Direct Examination

(Continued)

By Mr. Stocking:

Q. What is your business or occupation in Wallace? A. I'm an attorney.

Q. And how long have you resided there?

A. For about nineteen or twenty years.

Q. Do you know the defendant Allen?

A. Yes.

Q. How long have you known Allen?

A. About eighteen years, or a little more.

Q. Did you have business dealings with the defendant Allen over this period of time?

A. No.

Q. When did you first begin having business dealings with Allen?

(Testimony of Francis Clayton Keane.)

A. Sometime in the latter part of 1942 or the spring of 1943. [623]

Q. What was the transaction or business transaction you entered into?

A. He was vice president, I think, as I recall it, in charge of operations of the Callahan Consolidated Mining Company, and I was employed to do certain work for that company at that time, and consequently had relations with Mr. Allen.

Q. And now, at about that time or shortly thereafter, were there any other business relations with Mr. Allen in connection with the Montana Leasing Company?

A. Not prior to sometime in the late spring of 1943.

Q. And what was the transaction then that involved the Montana Leasing Company?

A. We organized or formed a corporation in the state of Montana for the purpose of operating and running some dumps located contiguous to the Lexington Mining Company's property at Neihart, Montana.

Q. And who were the principal parties that were interested in organizing that company?

A. Allen and myself. There was a man by the name of William Mullen who is since deceased, who was also interested in it.

Q. And did you then thereafter carry on some mining operations over there under the name of the Montana Leasing Company?

(Testimony of Francis Clayton Keane.)

A. Under the name of the corporation we carried on operations [624] up to, as I recall it, October 5 of 1943, at which time we commenced operating as a partnership under the firm name of Montana Leasing Company.

Q. The same name as the corporation?

A. That's correct.

Q. And what work was being done by this Montana Leasing Company then?

A. Well, at the time that we ceased running the dumps, they weren't paying, we started an exploratory program which consisted of a drift of approximately—not a drift, or it possibly was a drift, I guess it was a drift, as I think of it, over a distance of about 3,000 feet or some such distance.

Q. And what was the situation with regard to the operations of the Montana Leasing Company in the early spring of 1945, and I'm speaking particularly of the financial situation?

A. We had spent a large sum of money; we were in the hole.

Q. You were in financial difficulties?

A. That is correct.

Q. Now, are you familiar with the Lucky Friday Extension Mining Company? A. Yes.

Q. And who were the organizers of that company? A. Jim Allen and myself. [625]

Q. And when was that company first conceived?

A. Some time shortly prior to the time that it was organized.

(Testimony of Francis Clayton Keane.)

Q. Can you remember any discussions about that with Mr. Allen or with anyone else in Mr. Allen's presence?

A. I recall discussions with reference to it with Mr. Allen. The first time that it was called to my attention, Mr. Allen had been up to John Sekulic's, and he'd stayed there that night, and came down to Wallace; Sekulic lives at Mullan, which is approximately seven miles from Wallace; came down to Wallace to the hotel and called me and told me about this conversation he'd had with Sekulic, and that Sekulic had this ground which ultimately was placed in or one of the main assets of the Lucky Friday Extension.

Q. What did he propose to do with this ground?

A. That we incorporate it and dispose of the stock and bail ourselves out.

Q. By that expression, what do you mean by that expression?

A. Well, I understood that he necessarily, and I have used the expression myself, we meant that we would pay back certain monies that we owed.

Q. And you were going to make some money out of the promotion of the Lucky Friday Extension Mining Company if you could?

A. That's correct.

Q. Do you know the defendant Grismer?

A. Yes. [626]

Q. How long have you known him?

A. Maybe eight, nine years.

(Testimony of Francis Clayton Keane.)

Q. And did he have some connection with the Lucky Friday Extension Mining Company?

A. Yes.

Q. When did he come into the picture?

A. After Allen and I had discussed the details incident to its creation, and what we were going to do with it.

Q. And then did you have any discussions with Grismer about his part in the transaction?

A. Very few.

Q. Did you have—

A. I might add by way of explanation there that Mr. Grismer had worked for Mr. Allen for a considerable period of time, manager of the operations being carried on by the Callahan Consolidated, and I always regarded Mr. Grismer as Mr. Allen's man, and consequently I had very few conversations with him about what we intended to do or anything else in connection with it.

Q. Now, in connection with the proposal to make a public offering of stock, that you said was the proposal that was made?

A. Well, that was our understanding, that that's what we were going to do with it, yes. We discussed it.

Q. Now, were there any discussions between you and Mr. Allen [627] as to any limitations on Mr. Allen entering into that sort of a proposal?

A. I knew that he had an injunction against him growing out of some operations of Callahan Con-

(Testimony of Francis Clayton Keane.)

solidated stock, and that as a consequence he couldn't appear as a promoter in the transaction.

Q. Did you discuss that with Mr. Allen at the time?

A. Possibly, and possibly not. It was discussed on a subsequent occasion, I know. I think that it probably was discussed prior to that time, too, when we were choosing the people that we would put in the corporation as officers.

Q. Was there some consideration then as to whether or not Mr. Allen would be an officer of the company?

A. We both understood that he couldn't be.

Q. What part did you have in connection with the public offering, the arrangements for the public offering of the stock?

A. Well, I did incorporate, or at least the papers were prepared in my office for the incorporation of the company, by-laws, and matters of that kind, otherwise my connection with it was nil. I knew, however, the way it was being handled.

Q. When you prepared the articles of incorporation was Mr. Allen there at that time? [628]

A. I couldn't say. We had discussed the amount of capital stock, the price it was going to be, the price at which each share of stock was fixed, and matters of that kind, and we had also discussed the matter of who the officers of the company would be after it was incorporated.

Q. And by "we" who are you referring to?

(Testimony of Francis Clayton Keane.)

A. Mr. Allen and myself.

Q. Now, in the prospectus, Lucky Friday Extension prospectus which is an exhibit in this case, Plaintiff's 69, it is indicated that a million shares were to be offered to the public, and that 500,000 shares were to be taken as attorneys' stock for Elmer Johnston and F. C. Keane, and that 1,229,700 shares had been issued for mining claims and real estate, to Mr. Grismer. Now, who made the arrangements for that allocation of the stock?

A. Mr. Allen and myself.

Q. And what portion of that stock was to go to you?

A. Out of—I've forgotten what the figure, was it 300,000 that was to come to me?

Q. There's 500,000 shares to go to Elmer Johnston and F. C. Keane.

A. All right; 75,000 shares of the issuance to Mr. Johnston was to be retained by him. The 425,000 shares remaining was Allen's and my property.

Q. And that stock was issued in a block to Mr. Johnston, a [629] 200,000 share block?

A. I don't recall the actual detail of the issuance of the stock. I know that that's the way it was handled, however.

Q. What about the 1,229,700 shares that were issued to Mr. Grismer?

A. Mr. Grismer was to receive 100,000 shares of the stock for his interest in the company. The balance of it belonged to Allen and myself, subject to certain commitments that had been made with

(Testimony of Francis Clayton Keane.)  
reference to the other parties, for instance, Sekulic  
and others that were interested in it.

Q. Now, after the money came in from the promoters or from the underwriters in this first public offering of the Extension stock, who handled those funds? A. I did.

Q. They were banked—

A. Under the name of the Friday Extension,  
and I had the check on them.

Q. You had the check?

A. Yes. I wrote the checks, or at least they were written by either myself or by myself or Mrs. Vermillion, under mine or Mr. Allen's arrangement and direction.

Q. Now, there was some testimony here by Irene Vermillion that on some documents or checks she had written the name "F. C. Keane." Did you give her authority to write that name? [630]

A. She still writes most of my checks by signing my name to them.

Q. She has that authority?

A. She has at all times had that authority. I think that originally she wrote a few checks and signed them "Irene Vermillion" and I believe that I told her I preferred to have her sign them in the future, just sign them "F. C. Keane."

Q. Attached to the Defendant's Exhibit C, Mr. Keane, which has been admitted in evidence, is a financial statement regarding the Lucky Friday Extension Mining Company which reveals that begin-

(Testimony of Francis Clayton Keane.)

ning on July 28, 1945, and continuing until May 17, 1946, a number of checks totalling \$113,000 were issued to Montana Leasing Company and its successor, Lexington Silver Lead Mines, Inc., that was the name of the successor company? A. Yes.

Q. What have you to say as to the checks which were issued to Montana Leasing and Lexington Silver Lead Mines, Inc., in that amount?

A. We regarded them as loans from the Extension to the Montana, the partnership of the Montana Leasing Company and its successor, or the partnership's successor, the Lexington Silver Lead Mines, Inc.

Q. When you say "we" who are you referring to? [631]

A. Mr. Allen and myself. Whenever I use the word "we" unless I specify to the contrary, it would be so understood.

Q. Well, I think you'd better state who you mean by "we."

A. All right, I'll try to, Mr. Stocking.

Q. And a number of these checks which are contained in Plaintiff's Exhibit 6 for identification bear the signature "Irene Vermillion." At whose direction was she acting when she issued those checks?

A. Either Jim Allen's or myself.

Q. Were any instructions given to her, specific instructions given to her with regard to the issuance

(Testimony of Francis Clayton Keane.)

of checks into the Montana Leasing Company account?      A. Yes.

Q. What were those instructions?

A. She was told to do it.

Q. Was she told each time that a check was issued?

A. No. Her general instructions were to take funds from whatever source we had them, that were available, to cover checks that were outstanding.

Q. And you were carrying on a mining operation with the Montana Leasing Company during this period?      A. We were.

Q. You had a payroll to meet over there?

A. We did.

Q. Was it a very large payroll? [632]

A. It run ten, twelve, fifteen thousand a month.

Q. And was this the largest source of funds which went into the Montana Leasing bank account to meet that payroll?

A. What do you mean? I don't quite follow you.

Q. I mean this \$113,000; was that the largest source of funds?

A. It was one of them, it was one of the large ones.

Q. Can you identify Plaintiff's Exhibit 8, a file containing Plaintiff's exhibits for identification 8-a to 8-o inclusive?      A. Yes, I can.

Q. What are those exhibits?

A. They're bank statements, including cancelled

(Testimony of Francis Clayton Keane.)

checks written by either the Montana Leasing Company or the Lexington Silver Lead Mines, from a period starting in July of 1945 to July of 1946.

Q. Yes; I think there's one here for June.

A. Yes, the first one is June of 1945.

Q. Through July of 1946—wait a minute—yes, here's 8-o for August, 1946, is that correct?

A. August of 1946, yes.

Q. And you had custody of these records?

A. I did.

Q. You turned them over to the Securities and Exchange Commission? A. To Mr. Denney.

Q. And now with respect to the condition of the account of Montana Leasing Company, the bank account of Montana Leasing Company, what can you say with respect to that account and to the dates of the withdrawals of various amounts here shown on Defendant's Exhibit C?

A. I don't quite follow your question.

The Court: Defendant's Exhibit?

Q. Defendant's Exhibit C. These are a list of the checks. My question was framed as to what was the condition generally of the Montana Leasing bank account at the time any of these checks were written?

A. It had funds on hand to pay them.

Q. No, I don't mean that. I'm not talking about the Extension bank account, I'm talking about the condition of the Montana Leasing bank account.

A. Well, as a rule it was short of money or we

(Testimony of Francis Clayton Keane.)

wouldn't be putting it in there. Either of those two accounts, the Montana Leasing Company or the Lexington Silver Lead account were either in a precarious position or practically there, knew they were going to be in a day or two, at any rate.

Q. A number of overdrafts, as a matter of fact, appear on the bank statement?

A. Well, they appear there, but I don't believe except on an occasion or two when I made arrangements for those overdrafts [634] to be carried, were we overdrawn; checks would come in, and we'd be notified they were in, and arrangements would be made to cover them during that day, so that actually while the bank books show an overdraft, it actually was not an overdraft; they had funds on hand to pay those checks.

Q. You were notified by the bank of an overdraft? A. That's right.

Q. And on that occasion would the funds be transferred from the Extension?

A. Or the Pilot, or whatever we had.

Q. And the Pilot at a later date in the same manner? A. That's right.

Q. Did you ever have any discussions with Mr. Allen about the return of any of these funds to the Extension Company or Pilot? A. Yes.

Q. What were those discussions?

A. Well, until such time as we did organize the Friday X or the Extension we felt and still felt that the operation in Montana would prove successful.

(Testimony of Francis Clayton Keane.)

We were advised by reliable sources that we had at least a quarter of a million dollars profit over there, which was ample to repay what we owed.

Q. Was there any other discussions—— [635]

A. No. Oh, we had numerous discussions about how much money we were losing, and matters of that kind, yes.

Q. What was the conclusion after these discussions as to repayments of any of these monies?

A. At all times it was understood that we were going to repay in some way or the other.

Q. Now, the record shows that there was some of this money returned to these companies. What were the circumstances under which those monies were returned?

A. They were down and needed money, had to have money?

Q. When the Extension account got down some money was then returned to the Extension, is that correct? A. That is correct.

Q. Was that true also of the Pilot?

A. That was.

Q. So a small amount of money was paid back?

A. Yes.

Q. And the records will show what those exact amounts were? A. Yes.

Q. You don't have them in mind?

A. No, I haven't them available.

Q. Now, going to the Pilot Silver Lead Mines,

(Testimony of Francis Clayton Keane.)

Inc., what have you to say with regard to the formation of that company?

A. Well, Grismer and four or five associates, four other men, [636] I think, owned that ground up there. We knew about it, and finally Mr. Allen and I had a discussion about it, or had numerous discussions about it; we determined to handle it in the same manner that we had handled the Extension.

Q. Who made the arrangements as to what stock should be issued for promotion stock in that company? A. Allen and myself.

Q. Who took the responsibility of acquiring the properties for the company? A. Allen.

Q. Did you meet Mrs. Phelan?

A. I met her once, at the time that she made a transfer of the claims that she owned, in my office. Now, I think the deed was drawn there, and I was busy in another office, and I walked out for a few minutes and shook hands with her, and if I recall, Mrs. Vermillion wrote her the check on my personal account in payment for it, and I just casually met her.

Q. That was a six hundred dollar check?

A. A six hundred dollar check, if I recall correctly.

Q. But you had no conversation with her with regard to what the terms of her agreement would be?

A. No, the deal was made at the time with her, and the only thing left to do was to pay her the

(Testimony of Francis Clayton Keane.)  
money, and if I recall correctly the deed was being prepared at the very time [637] that I did meet her.

Q. Did you have any discussions with Mr. Allen concerning the terms of this deal?

A. I knew what they were, yes.

Q. Did he inform you what the deal was going to be? A. Yes.

Q. And you agreed to it? A. Yes.

Q. Now, how about the situation with regard to Mr. Herrick? Did you have any dealings with him?

A. Not until after that deal was consummated, I think, and paid him the \$5,000.

Q. And these transactions both go to the acquisition of the property by the Pilot?

A. One group was known as the Cincinnati group, that was the Herrick one, and the Phelan group was Mrs. Phelan's.

Q. Now, of the Pilot stock, the prospectus, Plaintiff's Exhibit 68, which has been admitted in evidence, shows that there was issued to you a total of 670,000 shares "of which amount Mr. Keane will retain 550,000 shares for his promotional efforts in connection with the acquisition of the Cincinnati group and the Phelan group, and the assignment to the company of the five unpatented claims which were located by him." Now, who was to get the ownership of those 550,000 shares? [638]

A. I beg your pardon?

Q. Whose shares were those to be, those 550,000?

A. Allen's and mine.

(Testimony of Francis Clayton Keane.)

Q. Then you were to transfer part of the remaining stock to Mrs. Phelan and to the Cincinnati people? A. That's correct.

Q. Now, Mr. Grismer was to get 900,000 shares for his claims, and was that to be retained by Mr. Grismer? A. No.

Q. What was the arrangement?

A. I've forgotten whether there were four or five associates there of Mr. Grismer, I think there were four—

Q. George Grismer, Joseph Grismer, Eugene Gadau, and William Walker.

A. All right; Joe Grismer was to be issued 500,000 shares, 300,000 shares of which was to go to the three other parties, Grismer, Gadau, and whatever the other gentleman's name is. He was to retain 200,000. The balance was Allen's and my stock.

Q. That would be 400,000 shares?

A. Approximately; whatever it would figure out, yes.

Q. Now, why weren't those facts as to the issuance of the stock disclosed in this prospectus? Did you see this prospectus?

A. I didn't pay much attention to it. I knew what was going [639] into it, however.

Q. Why was that condition as to the issuance of the stock not disclosed in this prospectus?

A. Well, we didn't figure that it would be as good a sales transaction, is one reason that actuated us in setting it up the way we did.

(Testimony of Francis Clayton Keane.)

Q. And was there any other reason?

A. I think at the time that that Pilot stock went out that Mr. Allen was released from that injunction.

Q. No, there was some evidence this morning that the injunction would run until June, 1946.

A. What time did we make the public offering of that?

Q. There was some evidence this morning that it was made May 2, 1946.

A. All right, then the same thing would apply to the Pilot.

Q. What do you mean by that?

A. That Mr. Allen was under an injunction, and we didn't want his interest in it to show.

Q. Now, with regard to the issuance of 150,000 shares of Pilot stock to James Gyde for legal services, what was the arrangement in regard to that stock?

A. Mr. Gyde was to receive 25,000 shares of it. The balance of it was to be returned to Allen and I.

Q. And who made that arrangement?

A. Allen and myself both discussed it with Mr. Gyde. [640]

Q. And in connection with the arrangement for the issuance of the Elmer Johnston Extension stock, why was that issued so that he only got 75,000 shares to retain out of his 200,000 share certificate?

A. Well, that deal was made between Mr. Allen

(Testimony of Francis Clayton Keane.)  
and Mr. Johnston. The only thing that I knew about it is what Mr. Allen told me.

Q. What was that?

A. He told me that we were getting that cut-back of that stock.

Q. And that was to be Allen's and Keane's stock? A. That's right.

Q. Did he tell you why the arrangement was made to issue it in Johnston's name first?

A. So that we'd have a good record on getting it out, being able to dispose of it.

Q. In connection with the transaction with Mr. Gyde are these the two checks, and I'm referring now to Exhibits 31 and 31-a, which were the proceeds from the sale of most of the Gyde stock?

A. I think that's correct.

Q. One of them bears your endorsement, does it not?

A. That's correct. That is signed by Mrs. Vermillion, however.

Q. That is her signature?

A. That is her signature. [641]

Q. But authorized by you?

A. Yes. It's actually my signature, but it was signed by her.

Q. Yes, and you're referring to Exhibit 31-a, the May 23, 1946, check. Now, with regard to the Plaintiff's Exhibit 13, a \$40,000 check to the Pilot Company from E. J. Gibson and Company, what have

(Testimony of Francis Clayton Keane.)  
you to say as to where you first obtained that check? A. Mr. Allen handed it to me.

Q. And where was that?

A. In the Metals Bar at Wallace. I think at the same time I might add that he handed me this \$10,000 check, which is marked—

Q. Plaintiff's 31.

A. —Plaintiff's 31, yes.

Q. That's the James Gyde check?

A. These two checks were handed to me at the same time.

Q. And what did you do with those checks, and I'm now referring you to Plaintiff's proposed exhibits 36, 37, and 38, which were identified as deposit slips of the Idaho First National Bank for F. C. Keane, Pilot Silver, and Coeur d'Alene Consolidated respectively? I'm talking about now the \$10,000 check and the \$40,000 check.

A. They were placed in the bank at Wallace.

Q. That's the Idaho First National Bank?

A. The Idaho First National Bank. [642]

Q. And before you deposited them there in the bank did you have any conversation with Mr. Allen regarding that deposit? A. Yes.

Q. What was that conversation?

A. Well, he walked in, as I recall it, it was late in the afternoon, four o'clock or after, and he and Mr. Horning had been in Spokane negotiating some of the transactions incident to the Coeur d'Alene Consolidated. He walked in, and he made

(Testimony of Francis Clayton Keane.)

the statement, showed me the two checks, or handed them to me, and he says "How's that for bringing in the money, bucko" or something to that effect.

Q. "How's that for bringing in the money, bucko"? A. Yes.

Q. You recall that?

A. Yes. Now, after that, shortly, I imagine we all had a drink, which was quite customary on my part at least at that time, and then he and I went back in the corner for a minute.

Q. A lot of your business was transacted there at the Metals Bar?

A. At least discussed there, I would say. Now, after he turned these over to me he went back and told me he wanted a check for \$25,000 for the Coeur d'Alene Mines, or he wanted \$25,000 for the Coeur d'Alene Mines out of it, and [643] I inquired at that time from him why he didn't bring up some of the money that he had from the sale of the stock.

Q. What stock would that have been?

A. That was Pilot, and Friday Extension.

Q. Some of the promotion stock?

A. Some of the stock that had been sold, yes.

Q. Of course, the Pilot issue was just beginning at that time.

A. All right, then it was Extension money, would be right, and he said he didn't have time, that they just busted by Gibson's and picked up these two checks and hurried up there. I said all right. I went down and I originally, on this Exhibit 38, I

(Testimony of Francis Clayton Keane.)  
originally deposited that to the credit of the Coeur d'Alene Consolidated—

Q. Coeur d'Alene Consolidated?

A. —taking \$25,000 out of this item for \$40,000 and the item for \$10,000. Thereafter I took a duplicate of this deposit slip up to the Metals Club where Mr. Allen was, and he told me he wanted a cashier's check. He was a little aggravated and said "If you don't want to go do it, I'll do it myself." Well, I said "I'll go down and get a cashier's check" which I did, for \$25,000, payable to the Coeur d'Alene Mines.

Q. Is this—

A. That's the exhibit right here in front of me; what is the number of it? [644]

Q. It's part of Exhibit 39, together with a contract between the Coeur d'Alene Consolidated and the Coeur d'Alene Mines.

The Court: Is that an exhibit or identification?

Q. For identification.

A. I probably mis-spoke myself, your Honor.

Q. And did you at that time see this contract that they were entering into? A. No.

Q. You had an interest in the Coeur d'Alene Consolidated?

A. Allen and I and Frank McKinley were supposed to be partners in it, equal.

The Court: Who is the third one?

A. Frank McKinley. He's a metallurgist for the Bunker Hill, at Kellogg.

(Testimony of Francis Clayton Keane.)

Q. What was finally done then with regard to the disposition of this \$50,000, besides the \$25,000 cashier's check?

A. Well, \$20,000 of it was deposited to the credit of the Pilot Silver Lead Company, and \$5,000 of it went out to me, and I guess I wrote a check for the difference there, or \$5,000, to make up this \$25,000 item.

Q. No, I think it comes out even; \$20,000 to Pilot, \$5,000 to F. C. Keane, and \$25,000 to Coeur d'Alene Consolidated makes \$50,000—

A. All right.

Q. —which was the amount of these two checks. A. That's right.

Q. And you state that that transaction whereby \$20,000 of the Pilot money was used to purchase this \$25,000 cashier's check for Coeur d'Alene Mines Corporation on behalf of the Coeur d'Alene Consolidated Mining Company was done with the knowledge and consent of Mr. Allen?

A. And under the direction, I would say.

Q. These two checks, exhibits 32 and 33 for identification, are the—

A. —two checks that were given in payment of the Phelan and the Cincinnati groups of mining claims, along with the stock.

Q. And these two checks attached together as one exhibit for identification, 30, the checks to James Gyde, one for \$1,000, one for \$1500.00, are those your checks? A. They are.

(Testimony of Francis Clayton Keane.)

Q. And was that to pay Mr. Gyde?

A. Yes. Now, Mr. Gyde and I entered into an agreement that we would advance him—we had purchased 10,000 shares at ten cents, that's represented by this thousand dollar check.

Q. Now, that's out of the 25,000 shares that he was to keep for himself?

A. Out of the 25,000. A few days later I gave him an additional \$1500.00, which represented the balance of the interest he had in that stock, with the understanding that [646] within a specified period if the price went up we would pay him accordingly for it.

Q. But the net result is that—

A. Mr. Gyde got \$2500.00 out of the transaction.

Q. And you and—

A. —Allen became the owners of his stock.

Q. And disposed of it?

A. I imagine it's been disposed of.

Q. Well, you saw the checks here from the Gibson Company?

A. Well, I couldn't trace whether they're payment of any particular stock.

Q. I see, as to certificate numbers?

A. No, I wouldn't be able to trace it at all.

Q. But you knew these two checks were for the sale of the Gyde stock? A. That's right.

Q. They're made payable to Gyde.

Mr. Stocking: Some of these exhibits have not yet been received in evidence. I will offer Exhibits

(Testimony of Francis Clayton Keane.)

33, 36, 37 and 38, Exhibits 30 and 39.

Mr. Etter: I'll object to the admission of each and every one of these exhibits on the ground that they're incompetent, irrelevant and immaterial, no proper foundation has been laid yet from the testimony of any witness or this witness within the counts of the indictment as [647] alleged as against the defendant Allen.

The Court: Let me see the exhibits. The objection is overruled.

Mr. Etter: Exception.

The Court: Exhibit 36 is admitted, Exhibit 37 is admitted, Exhibit 38 is admitted, Exhibit 33 is admitted, Exhibit 30 is admitted, and Exhibit 39 is admitted.

Mr. Etter: Exception as to each, please.

(Whereupon, Plaintiff's Exhibits No. 30, 33, 36, 37, 38 and 39 for identification were admitted in evidence.)

Q. (By Mr. Stocking): Mr. Keane, I will show you Plaintiff's proposed Exhibit 4, and ask you if you can identify that exhibit. Have you examined that exhibit?

A. I'm just completing it now. They're duplicate deposit slips from the 23rd day of July, 1945, to January 3, 1947, of deposits to the credit of the Lucky Friday Extension.

Q. And where were the records of the Lucky Friday Extension kept, and under whose control?

A. Mine, my office.

(Testimony of Francis Clayton Keane.)

Q. In your office? A. Yes.

Q. And actually they were being kept by whom in that office? A. By Mrs. Vermillion.

Q. Under your direction? [648]

A. That's right, or under my direction and Mr. Allen's direction also.

Q. And did you also keep the stock certificate books? A. We had them there.

Q. Will you mark these, please?

(Whereupon, stock certificate book stubs of Extension were marked Plaintiff's Exhibits No. 90, 91 and 92 for identification.)

Q. I'll show you some that have not yet been identified, marked 91, 92 and 90; can you identify these as stock certificate books of the Extension Company, stub books? A. They're the stubs.

Q. Now I'll show you the Plaintiff's Exhibit 5 for identification, and ask you if you can identify that as a record, and in that connection also, Plaintiff's Exhibit 6.

The Court: Is that admitted?

Q. No, for identification; I'm sorry.

A. This is the check stub, I'm referring to Exhibit 5, is the check stub of the Friday Extension for the period dated July 28, '45, to January 31 of '47.

Q. And that was kept by whom?

A. It was kept in my office under our joint control, and most of the checks were drawn by Mrs. Vermillion.

(Testimony of Francis Clayton Keane.)

Q. And can you identify Plaintiff's Exhibit 6 for identification? [649]

A. The exhibit marked for identification is a bunch of checks running from July 23, 1945, to March 13, 1947, drawn on the Lucky Friday Extension Mining Company account in the Idaho First National Bank. The checks were signed by either Irene Vermillion or by myself.

Q. Now, Plaintiff's Exhibit 7 for identification.

A. Extension bank statements from July 23 of '45 to March 13 of '47.

Q. And where were these records kept?

A. After they were returned to the Extension Company they were in my office until such time as I delivered them to Mr. Denney.

Q. Now, all of these Extension records that you have identified were delivered to Mr. Denney of the Securities and Exchange Commission?

A. That's correct.

Mr. Stocking: I will not offer the stock stubs, but I'd like to offer at this time Plaintiff's 4, 5, 6 and 7 for identification.

Mr. Etter: I'll object to the exhibits all on the same ground, that a proper foundation has not been laid, they're incompetent, irrelevant and immaterial to show any proof of the allegations of the counts of the indictment as against the defendant Allen, there's no showing that he was privy to any of the records there indicated, or had [650] access thereto.

(Testimony of Francis Clayton Keane.)

The Court: Let me see them. What is this slip in Exhibit 5? Is it of any significance?

Mr. Stocking: Not that I know of, your Honor. No, that has no significance; I didn't know it was on there.

The Court: The objections are overruled; Exhibits 4, 5, 6 and 7 are admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 4, 5, 6 and 7 for identification were admitted in evidence.)

The Court: Just a moment; it's time for recess. The jury is at recess for ten minutes. The court is at recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

\* \* \*

Mr. Stocking: The clerk has called my attention to the fact that in Exhibit 5, which was just admitted in evidence, there is also a page marked Exhibit 5-a, which was the page on which Irene Vermillion had made the notation [651] "To J.A.A." and I ask that that be admitted also, as a part of Exhibit 5.

The Court: Exhibit 5-a is offered. Counsel had better see it.

Mr. Stocking: It's part of Exhibit 5. They re-

(Testimony of Francis Clayton Keane.)

late to these two checks, exhibits 8 and 9, which have already been admitted in evidence.

The Court: What is it you're saying now?

Mr. Stocking: I say, the stub page there which is marked 5-a relates to these two checks, exhibits 8 and 9, which have already been admitted in evidence.

The Clerk: Let me correct you; it's checks 8 and 9, but exhibits 6a and 6-b.

Mr. Stocking: Oh, thank you; checks 8 and 9 of the Extension.

Mr. Etter: Your Honor, at this time we're going to object to the admission of this exhibit on the ground that it's incompetent, irrelevant and immaterial to prove any issue as laid in any count of the indictment as relating to the defendant Allen, the further ground that no proper foundation has yet been laid, including all of the testimony and the testimony of this witness; the indication of the exhibit and the testimony does not show the defendant Allen privy with anything sought to be proved here; likewise it appears from the exhibit that the pencilled notation [652] as to number 8 as it appears on the exhibit there, \$10,000, on number 9 it is \$5,000, and that the handwriting is obviously apparently different as to both the \$10,000 and the initials J.A.A., yet the testimony has been to the effect that both were executed simultaneously.

Mr. Stocking: I don't believe that's the testimony.

(Testimony of Francis Clayton Keane.)

Mr. Etter: Or within a reasonable time after the occurrence of the event, whatever it was; I'm not trying to remember the record; and that the same so far as the defendant Allen is concerned is mere hearsay and inadmissible to prove any point.

Mr. Stocking: Mrs. Vermillion testified to that as the notations made in the regular course of business when she gave those two checks, signed but in blank, to Mr. Allen on August 7, 1945.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 5-a admitted.

(Whereupon, Plaintiff's Exhibit No. 5-a for identification was admitted in evidence.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Now, have you had an opportunity to look over Plaintiff's Exhibit 9? A. Yes.

Q. And what is that exhibit? [653]

A. That's the deposit slips of the Montana Leasing Company.

The Court: Is that an identification?

Mr. Stocking: Yes, Exhibit 9 for identification.

\* \* \*

A. This is Plaintiff's Exhibit 9, marked for identification. It's copies of deposit slips in the First National—I can't get the name of this bank; as

(Testimony of Francis Clayton Keane.)

I remember it, it's the First National, Great Falls, Montana, and to the Idaho First National.

Q. Do they cover all of the deposit slips of the Montana Leasing Company from what dates?

A. From August 19, '43, to December 23 of '46.

Q. And this record was retained—

A. In my office.

Q. And turned over to Mr. Denney?

A. That's correct.

Q. By you? [654]

A. Correct.

Q. And of these deposit slips whose handwriting appears beginning with the deposit slip, or I am referring especially to the deposit slips beginning June 4, 1945, of those deposit slips which are in handwriting?

A. This one is Irene Vermillion. So is this one. That would be—

Q. That's marked Exhibit 9-a beginning with that slip? A. Yes.

Q. I just wanted you to identify it generally.

A. Generally it's Irene Vermillion's writing.

Mr. Stocking: We'll offer in evidence Plaintiff's 9, being the Montana Leasing Company deposit slips identified by this witness.

The Court: Are you offering all of them, beginning 1943?

Mr. Stocking: I'm going to offer just the portion beginning marked 9-a, that's June 4, 1945, on.

The Court: You're offering now 9-a, and not 9?

(Testimony of Francis Clayton Keane.)

Mr. Stocking: Yes, I'm corrected.

Mr. Etter: The defendant at this time will object to the admission of this exhibit on the ground that it's incompetent, irrelevant and immaterial, a proper foundation has not been laid, there's nothing in the exhibit that goes to prove any count or charge as alleged and laid in [655] the indictment against the defendant Allen.

The Court: Exhibit 9-a, as I understand it, was all of the slips of what was previously Exhibit 9 which begin with the slip marked June 4, 1945.

Mr. Stocking: Yes, from that date on.

The Court: The Lexington Silver Mine deposit slips and the Montana Leasing Company deposit slips are combined in the same exhibit?

Q. (By Mr. Stocking): What was the circumstances with respect to the Lexington Silver Mines?

A. They are one and the same, and are combined.

Q. Yes; it was the successor company to Montana Leasing?

A. To the partnership of Montana Leasing.

The Court: There seem to be combined in this exhibit some sheets that have not yet been explained. They don't on the face of them appear to be deposit slips. I call your attention to five. Without explanation of these five the exhibit will be rejected. I will reject it now, for the purpose of the record. Exhibit 9-a rejected, defendant's objection sustained.

(Testimony of Francis Clayton Keane.)

Q. Those slips, Mr. Keane, can you identify those five items in Exhibit 9-a to which the Court has just referred?

A. They're settlements on ore shipped by the Callahan Consolidated to the Bunker Hill Smelter or the Sullivan Zinc Plant, out of which shipments the Delaware Mines Company [656] had a royalty.

Q. Was that royalty then deposited to the credit of the Montana Leasing Company? A. Yes.

Q. Well, does that deposit show in any of these deposit slips? Can you identify the deposit slips?

A. Wait a minute until I get some dates, and I'll tell you.

Q. They support the items on certain deposit slips, is that it, Mr. Keane?

A. Yes, I think that is correct.

Mr. Stocking: I'd like to renew my offer of this exhibit, but have these particular items which are stapled in there eliminated; they're not necessary for our consideration.

The Court: All right, you've made a renewed offer of 9-a less certain slips.

Mr. Stocking: I'll have the clerk extract them.

The Court: Just a moment; you needn't extract them yet. Counsel may object to them being extracted.

Mr. Stocking: I'm making the offer without offering those.

Mr. Etter: The defendant will stipulate, your Honor, that it isn't necessary to detach these par-

(Testimony of Francis Clayton Keane.)

ticular sheets which your Honor has singled out, but they may be clipped together, and the offer may be renewed in that [657] form, if that meets the approval of the court.

The Court: All right, Exhibit 9-a is re-offered.

Mr. Etter: The same objection is made to it, even with the clipping on it.

The Court: Objection is overruled.

Mr. Etter: Exception.

The Court: 9-a is admitted.

(Whereupon, a portion of Plaintiff's Exhibit 9 for identification was admitted in evidence as Plaintiff's Exhibit No. 9-a.)

Q. (By Mr. Stocking): Have you had an opportunity to examine Exhibit 17 for identification?

A. Yes.

Q. What is it?

A. It's the bank sheet of the Pilot Silver Lead from May 22, 1946, until February—

The Court: Of the Pilot?

A. Of the Pilot Silver Lead, from May 22, 1946, until the 26th day of February, 1947.

Q. And can you identify Plaintiff's 14 for identification?

A. Deposit slips, Pilot Silver Lead, in the Idaho First National Bank from May 22, 1946, until February 26, 1947.

Q. And you're referring now to Plaintiff's Exhibit 14— A. That's right.

(Testimony of Francis Clayton Keane.)

Q. —for identification? [658] A. Yes.

Q. Now refer to Plaintiff's 16; have you looked that over?

A. That's the check stubs, Pilot Silver Lead, from June 3, 1946, to February 18, 1947.

Q. And now refer to Plaintiff's Exhibit 15; you have had an opportunity to look that over, have you?

A. Yes. Those are cancelled checks of the Pilot Silver Lead from May 31, 1946, until February 18 of 1947, and they include some bank charges.

Q. And these records of the Pilot Company were kept where? A. In my office.

Q. And did you turn these records over to Mr. Denney? A. Correct.

Mr. Stocking: We'll offer Plaintiff's 16, 17, 15 and 14 for identification, records of the Pilot.

Mr. Etter: The defendant, your Honor, will object to each and every one of these exhibits which have been offered on the ground that they're incompetent, irrelevant and immaterial, don't go to prove any issues made out in any count of the indictment as against the defendant Allen, no proper foundation has been laid at this time.

The Court: Exhibits 14, 15, 16 and 17 are admitted.

Mr. Etter: Exception.

The Court: The objection is overruled.

(Whereupon, Plaintiff's Exhibits No. 14, 15, 16 and 17 for identification [659] were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Q. (By Mr. Stocking): Mr. Keane, I'll show you Plaintiff's Exhibits 21, 52, 20, 51 and 19, the latter being for identification. These exhibits have been identified as letters prepared and mailed with the stock certificates of the Lucky Friday Extension Mining Company and Pilot Silver Lead Mines, Inc., to the Spokane brokers who participated in these underwritings. Can you state under whose direction they were mailed? A. Under mine.

Q. And these were prepared where?

A. In my office.

Mr. Stocking: All of these have been received in evidence, if the Court please, except Plaintiff's Exhibit 19, and the Court yesterday had some question about two of the letters in Exhibit 19, being the letters dated May 29, 1946, which Irene Vermillion had identified, that all of these letters had been mailed, and they were identified yesterday as having been received.

The Court: I've not checked my notes yet. Exhibit 19 is renewed. I assume you're still objecting?

Mr. Etter: Yes, we're still objecting, your Honor.

The Court: Ruling reserved.

Q. (By Mr. Stocking): Mr. Keane, I'll show you what has been admitted in evidence as Exhibits 6-a and 6-b, being checks [660] to the Delaware Mines Corporation dated August 7, 1945, \$10,000, and 6-b being the Montana Leasing Company, \$5,000, August 28, 1945, both being checks written

(Testimony of Francis Clayton Keane.)  
by Lucky Friday Extension Mining Company, and  
ask you if you authorized the issuance of those two  
checks?

A. No, outside of the general authorization. I  
didn't specifically authorize the drafting of either  
of these checks.

Q. Did you know anything about the drafting  
of those checks?

A. Not until they were shown to me in the grand  
jury room.

Q. And what is the Delaware Mines Corpora-  
tion?

A. The Delaware Mines Corporation is a corpo-  
ration that formerly owned the land, or the mining  
ground, that was conveyed to the Callahan Consoli-  
dated, and I think that the Days at the present time  
have a substantial interest in it.

Q. Well, I mean who is in the Delaware Mines  
Corporation, or who was in it at that time?

A. Mr. Allen, Grismer, Mullen, myself, and I've  
forgotten who the fifth director was; I think that  
there were five directors.

Q. Was that an active corporation in August 7,  
1945?

A. Only to the extent that it probably was re-  
ceiving some royalty payments from the Callahan  
Company.

Q. And what persons were in a position of con-  
trol of that [661] company?

A. Mr. Allen and myself.

(Testimony of Francis Clayton Keane.)

Q. Do you know of any particular obligation of the Lucky Friday Extension Mining Company to Delaware Mines Corporation for which Exhibit 6-a, the \$10,000 check, could have been paid on August 7, 1945? A. None except—

The Court: This is the Extension?

Q. This is the Extension check to Delaware Mines Corporation, \$10,000.

A. There was no direct obligation from the Extension Company to the Delaware Company. There was, however, an obligation which the Montana Leasing Company owed to the Callahan Consolidated in existence at that time, for money that was borrowed some time previous thereto.

Q. And when the money had been borrowed from the Callahan, what company borrowed the money?

A. The Montana Leasing Company, the partnership of Allen and myself.

Q. To refresh your recollection, I'll show you Plaintiff's Exhibit 45.

The Court: Is that admitted?

Q. No, that's right, Exhibit 45 for identification.

A. That is a check given by the Callahan Company to the Delaware Mines Corporation for \$6,000 under date of June [662] 16, 1945.

Q. Also to refresh your recollection I'll refer to Plaintiff's Exhibit 9-a, a deposit slip of June 16, 1945, into Montana Leasing Company, and then I will ask you who borrowed the money from the Callahan Consolidated Company?

(Testimony of Francis Clayton Keane.)

A. Mr. Allen borrowed it from Mr. Callahan and brought the check down to our office and I think he gave it, as I recall it, he turned it over to me; I in turn turned it over to Mrs. Vermillion with instructions to her to deposit it to the Montana Leasing Company.

Q. But the loan was made to what company?

A. To the Delaware Company.

Q. Yes. Now, with respect to Plaintiff's exhibits 41, 41-a and 41-b for identification, can you identify those three checks?

A. They're checks drawn by the Delaware Mines Company payable to the order of Montana Leasing Company.

Q. That's 41-b?

A. 41-b for \$3,000, \$6,000 to the Callahan Consolidated Mines, Inc., which is Plaintiff's 41-a marked for identification, and a check for \$1,000 to Walter H. Hanson by the Delaware Mines Corporation, all of them being dated August 7, 1945.

Q. Now, whose names appear on those checks?

A. Mr. Allen's and my own. [663]

Q. And what was the practice with respect to signing Delaware checks?

A. Mr. Allen had some of them signed up, and I had some of them signed up; that is, I would sign the checks that two of us had to sign, and on the checks that were turned over to him I would sign and turn them over to him, and he would sign the ones that were left in my office.

(Testimony of Francis Clayton Keane.)

Q. Now, did you have anything to do with the issuing of these three checks, 41, 41-a and 41-b, on August 7, 1945?

A. I had signed them previous to August 7, 1945.

Q. In blank? A. In blank.

Q. And was there an obligation at that time—did this obligation of Delaware Mines Corporation to Callahan Consolidated, Inc., of \$6,000, exist up to that date of August 7, 1945?

A. That is my understanding, that's the repayment of the loan which was made under date of June 16 to the Delaware.

Q. And were you present when that loan was made by Mr. Allen? A. I was not.

Q. Where were you?

A. I was in my own office, which is down the hall a ways from the Callahan office.

Q. Do you recall having any conversation with Mr. Allen about that loan? [664]

A. I recall—no, I don't know whether it was that particular loan or another one. We did have a conversation one time when we got I think it was \$6,000 from Callahan, and he went in and asked him for it, and Les Randall was present, Mr. Randall is an accountant in Wallace, and Jim says "I've got to have some money"—

Q. This is what Mr. Allen told you?

A. Told me that had occurred. He said "I've got to have some money" and Donald says "How much?"—

(Testimony of Francis Clayton Keane.)

Q. Donald?

A. Callahan. Allen says \$6,000. Callahan says "When do you have to have it, next week?" Jim says "No, we want it now" and Callahan says "Well, you mean tomorrow, or the next day?" and Jim says "No, I mean now", and thereupon Callahan complained that he was given no notice, but he wrote the check just the same.

Q. Well, was it customary for the Delaware Mines to obtain loans from time to time from the Callahan?

A. We had loaned money back and forth on various occasions.

Q. And who dealt on behalf of the Delaware with Donald Callahan? A. Mr. Allen.

Q. Showing you the Plaintiff's identification 34 and 35, being deposit slips of the—original deposit slips, 34, of the Delaware Mines Corporation, 35 identified as [665] original deposit slip of Montana Leasing Company, both for August 7, 1945, reflecting the deposits of these Delaware checks—no, reflecting, 34 reflecting the deposit of Exhibit 6-a, and 35 reflecting the deposit of the \$3,000 Delaware check to Montana Leasing on August 7, 1945, did you have anything to do with the preparation of those deposit slips? A. No.

Q. And if, as the evidence shows, they were prepared by Beatrice McLean French on August 7, 1945, did you give her any directions about the preparation of those?

(Testimony of Francis Clayton Keane.)

A. I wasn't in town during business hours on the 7th of August.

Q. Of 1945? A. Of 1945.

Q. Have you made a check to determine where you were on that day? A. Yes.

Q. And where were you on August 7, 1945?

A. I was over on Bird Creek, about twelve miles up the north fork—I mean up the St. Joe River from the town of Avery.

Q. How did you fix that particular date?

A. There was a notation in the office wherein I had given Mrs. Vermillion instructions to call me on Wednesday or [666] Thursday so that I would have an excuse to come home. I found that notation in her notes.

Q. And that refreshed your recollection?

A. That refreshed—then I checked back on a meeting of the Hecla Mining Company, the board of directors; Mr. Hobin was the host at this, and he was entertaining one of the directors, Mr. Meyers, Henry Meyers, who is now deceased, from Milwaukee.

Q. When was this fishing trip with relation to the date of the Hecla Board meeting?

A. Well, the board meeting was held on a Monday. On Monday afternoon Hobin called me—

Q. What date was that Monday?

A. That would be the 6th.

Q. August 6, 1945.

(Testimony of Francis Clayton Keane.)

A. And he and Meyers went on over on the evening of the 6th. Murfelt, Horning, Sekulic and myself went over on the morning of the 7th.

Q. Did you all go together, or separately?

A. No, I think that Horning went in Murfelt's car, and Sekulic went in mine.

Q. And did you stay out there?

A. We stayed out there until Saturday.

Q. That's your recollection?

A. That's my recollection. [667]

Q. Was there some other way in which to fix that particular week you were out there?

A. Yes, there was. Fred May, who was a deputy sheriff at Avery, drove up to where we were camped on, if I recall correctly, it would be a Friday night, and advised us as to the damage that was done by the atom bomb which was dropped on the first of the Japanese cities, and also stated that Russia had entered the war against Japan, and also stated that there was strong talk of peace of the Japanese war at that time.

Q. And those incidents, and by your checking back to the dates of those incidents, helped you refresh your recollection as to the specific date?

A. They definitely refreshed it.

Q. Can you identify Plaintiff's Exhibits 8-c-1 and 8-c-2 for identification?

A. They're checks signed by J. A. Allen drawn on the account of the Montana Leasing Company.

Q. And what is the date of each of those?

(Testimony of Francis Clayton Keane.)

A. Those checks are dated August 7, 1945.

Mr. Stocking: We'll offer in evidence at this time Plaintiff's Exhibits 8-c-1 and 8-c-2.

Mr. Etter: We'll object to the introduction of these exhibits, your Honor, on the ground that they are incompetent, irrelevant and immaterial, they don't go to [668] prove any issue in this case whatsoever, and for the further reason that no proper foundation that I can see has been laid for the admission of the same, and on the ground that the same serve no useful purpose other than an accumulation of documents which serve only to tend to confuse the jury and to avoid the issues made, as a matter of fact, in each count in the indictment against the defendant Allen.

The Court: Are those checks dated August 7, 1945?

Mr. Etter: Yes.

The Court: Signed by Mr. Allen?

Mr. Etter: Yes.

The Court: On Montana Leasing?

Mr. Etter: Yes, sir.

The Court: Admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 8-c-1 and 8-c-2 for identification were admitted in evidence.)

Mr. Stocking: I'll also offer in evidence the Plaintiff's Exhibits 41, 41-a and 41-b, being the

(Testimony of Francis Clayton Keane.)

three Delaware checks of August 7, 1945; 34 and 35, being the deposit slips, one covering Montana Leasing, the other Delaware, on August 7, 1945, and Plaintiff's 45, the Callahan Consolidated loan to the Delaware. [669]

Mr. Etter: I'm going to object to these exhibits on the ground that they're incompetent, irrelevant and immaterial to prove any issue in this case as laid in the indictment against the defendant Allen; on the further ground that no proper foundation has been laid, and the introduction of these exhibits would serve no purpose other than confusion and speculation as to the intent and meaning of the exhibits; there have been no connections with the counts of the indictment against the defendant Allen; they're incompetent, irrelevant and immaterial to prove any issue in the case.

Mr. Stocking: The tracing of the funds.

Mr. Etter: What funds?

Mr. Stocking: The dates are significant.

The Court: What's that?

Mr. Stocking: I say, the tracing of the funds, the dates are significant.

The Court: Objections are overruled. Exhibits 34, 35, 41-b, 41-a, 41, and 45 admitted.

Mr. Etter: Note an exception.

(Whereupon, Plaintiff's Exhibits No. 34, 35, 41, 41-a, 41-b, and 45 for identification were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Mr. Stocking: I'd like to refer to these two particular checks admitted as 8-c-1 and 8-c-2, make a [670] brief reference to the jury.

The Court: You may.

Mr. Stocking: These checks are dated August 7, 1945, signed by James A. Allen, drawn on Montana Leasing Company, one to Kent and Rusch, the sum of \$59.95, bearing the typewritten notation at the lower corner of the check "James A. Allen insurance". The second check, August 7, 1945, Inland Empire Racing Association, \$200.00, James A. Allen.

The Court: Let me see those. It's my recollection that there was no objection as to these two checks. Am I right in this?

Mr. Etter: No. There was an objection.

The Court: When were these admitted?

Mr. Stocking: Just a moment ago, your Honor. On the date of August 7 they were signed by Mr. Allen.

The Court: Oh, yes, these are the two signed by Mr. Allen.

Mr. Stocking: Yes.

The Court: All right, the admission of those two is re-affirmed.

Q. (By Mr. Stocking): Mr. Keane, did you have anything to do with the direction as to the writing of those two checks, 8-c-1 and 8-c-2?

A. They were not prepared in my office. [671]

Q. And not prepared under your direction?

A. No.

(Testimony of Francis Clayton Keane.)

Q. Can you identify Plaintiff's Exhibit 40?

A. No, I don't believe I can.

Q. This is an original record of the bank?

A. Yes.

Q. It has been identified as a Delaware Mines Corporation deposit statement. Who had authority to sign checks on the Delaware account during the month of August, 1945?

A. Allen, and I've forgotten the date of Mullen's death.

Q. Didn't he die early in 1945?

A. I can't recall the date. If he did, then it was Jim Allen and myself.

Q. Whose names appear on the checks that were issued that date.

A. Yes. It's possible that young Bill Mullen, in the event the elder had died, had authority. I've forgotten.

Mr. Stocking: We'll offer Exhibit 40. It was identified by Mr. Kraemer. It shows the condition of the Delaware bank account on the date that these checks the Extension gave went into it.

Mr. Etter: I'm going to object to the admission of this exhibit on the ground it's incompetent, irrelevant and immaterial; plainly on its face indicates, if the Court please, a series of transactions extending from [672] June 22, 1944, until December, 1945; it does not go to serve or to prove any count or allegation as laid in the indictment against

(Testimony of Francis Clayton Keane.)  
the defendant Allen, and is in no way relevant to  
this case, and that's all.

The Court: All right. When was the Extension  
organized?

Mr. Stocking: What was that, your Honor?

The Court: Yes.

Mr. Stocking: What did you say? I didn't hear  
you.

The Court: What date was the Extension or-  
ganized?

Mr. Stocking: The Extension was organized in  
May, 1945.

The Court: Well, unless there's some explana-  
tion, I can see no admissibility of that portion of  
this exhibit before May 8, 1945.

Mr. Stocking: Well, we really didn't intend to  
make any reference to that portion of the exhibit,  
except—

The Court: Well, it can be covered, that portion  
of it, if you wish to re-offer it with the entries prior  
to May 8, 1945, covered.

Mr. Stocking: Yes, I'll make that limitation on  
my offer.

The Court: It will be understood that when it  
goes to the jury, that such portion is to be cov-  
ered. [673]

Mr. Stocking: Yes. •

The Clerk: Was that May 8, or 28th?

Mr. Stocking: The prospectus says June, I think  
the date was May, but make it on June 1, 1945.

(Testimony of Francis Clayton Keane.)

The Court: All right, Exhibit 40 is re-offered with respect to the entries dated on or after June 1, 1945. Objection overruled.

Mr. Etter: An exception.

The Court: Exhibit 40, entries since June 1, 1945, admitted.

(Whereupon, Plaintiff's Exhibit No. 40 for identification was admitted in evidence.)

Q. (By Mr. Stocking): Now, with reference to the Pilot, the exhibits show that checks were issued, two checks were issued to War Eagle Mining Company on June 28, 1946, and July 31, 1946, for a total of \$1200.00. Who was the War Eagle Mining Company? Do you know that company?

A. It was originally agreed that it was Ben Porter, who lives in Seattle, Mr. Allen, and myself; we each owning a third in it, having some ground down out of Salmon, Idaho.

Q. What do you know about the transfer of funds from Pilot to War Eagle Mining Company?

A. Sometime the winter before we had, that is, Porter, Allen and myself had a conversation in which he stated that he would need about \$10,000 during the summer to do some [674] work down at Salmon, or at this property. At that time, as I recall, we said that we probably would be able to help out on it. The next knowledge I had of it was the checks coming in and the bank calling me on them, and the first one or two of them I think I told them to pay. Now, I don't know what was done

(Testimony of Francis Clayton Keane.)  
after that. There was a total of somewhere around \$8,000 advanced to the War Eagle.

Q. Was most of that advanced out of Montana Leasing Company account?

A. Well, there was so many transfers back and forth it would be impossible for me to say where it came from.

Q. Well, did you discuss these advances from these accounts with Mr. Allen?

A. Only on the one occasion that I mentioned, and I think that conversation occurred here in Spokane.

Q. Did you later ever have any conversation with Mr. Allen about the covering of checks as they came in on the War Eagle account?

A. Well, I don't believe that I did. It was my understanding that Mrs. Vermillion did have.

Q. Now, what about the advances shown in the records in evidence of \$10,000 to the Independence Lead Mines Company by Pilot on June 25, 1946?

The Court: What company?

Q. Independence Lead Mines Company. [675]

A. That was advanced.

Q. Who was Independence Lead Mines Company at that time?

A. Well, I was in charge of it at that time.

Q. You were what?

A. I was in charge of it, president of it.

Q. And was that an advance discussed with Mr. Allen? A. Yes.

(Testimony of Francis Clayton Keane.)

The Court: Just a moment; will you read that last question, please?

(Whereupon, the reporter read the last previous question and answer.)

Q. What was the substance of your discussion as to the necessity of your taking this money from Pilot?

A. I told him that—I think it was used for the payment of attorney's fees, and I told him I had to take it.

Q. Did he agree to that? A. He did.

Q. The Pilot also advanced some \$61,300 to the Lexington Silver Lead, which was the successor to Montana Leasing. Were there any different instructions given, or any different reasons for those advances than you have previously testified to about the Extension? A. No.

Q. And those advances that I've just referred to were in addition to the \$20,000 which was deposited for the [676] benefit of Coeur d'Alene Consolidated from Pilot funds?

A. Now, I haven't checked those figures, and I couldn't tell you the exact amount. I know it was substantial.

Q. How long did the Pilot run before they ran out of money, after the money came in from the underwriters?

A. Not very long; maybe three, four months, five months.

Q. The money came in from the underwriters

(Testimony of Francis Clayton Keane.)  
the end of May and the first part of June, 1946, did it not?

A. That would be right. It had practically suspended operations in the late fall of '46.

Q. And by September, '46, there was an overdraft?

A. Well, that's within the realm of possibility, yes.

Q. And then it became necessary for some money to be put in Pilot? A. Probably was, yes.

Q. Now, was there ever any action on the part of the stockholders or the directors of these companies authorizing the diversion of these monies to these other companies you've mentioned?

A. No.

Q. There was no corporate action taken at all?

A. No.

Q. There has been some testimony, Mr. Keane, concerning conferences regarding the entering into of a contract between the Extension, the Hunter Creek, and the Big Friday. Do [677] you recall that there were some negotiations?

A. Oh, definitely.

Q. Who participated in those discussions and negotiations on behalf of the Extension?

A. Well, possibly I was supposed to, or probably I was supposed to. At the time, if I recall correctly, I was under the influence of intoxicating liquor, and I think Mr. Allen took full charge of those negotiations and negotiated the contract on

(Testimony of Francis Clayton Keane.)  
behalf of the Friday Extension. Horning was acting for the Big Friday, and Johnston and Dunlop, who's the president of the Hunter, or at least is in control and charge of it, negotiated on behalf of the Hunter Creek.

The Court: Johnston and who?

A. ——and Dunlop.

The Court: Dunlop for Hunter, and who for Big Friday?

A. Horning.

Q. Did you know anything about the defendant Allen receiving 100,000 shares of Hunter Creek stock in connection with those negotiations?

A. He advised me about the time of these negotiations that he and I were to receive 100,000 shares of Hunter Creek for assistance rendered by Allen in those negotiations; that in addition to that we were to get another 200,000 shares [678] which was to be split six ways.

Q. That was the Hunter Creek stock?

A. Hunter Creek stock, yes.

Q. This is what Mr. Allen told you?

A. That's right.

Q. Did you ever get any of the stock?

A. Well, Mr. Allen acknowledged at one time in a contract that he would put that up in the hands of some trustees, but to my knowledge it's never been put up.

Q. In other words, you didn't get any of it?

A. I didn't get any of it.

(Testimony of Francis Clayton Keane.)

Q. Now, was there ever any arrangement for the issuance of Extension stock to Mr. Allen in connection with those negotiations?

A. Of Extension stock?

Q. Yes. A. No.

Q. Had the arrangements for the division of the Extension stock been made prior to that?

A. Definitely.

Q. And they were as you have previously testified? A. That's right.

Q. Now, in your dealings with Mr. Allen, and as you've described it, the so-called partnership arrangement, when did this arrangement end, come to a conclusion, as far as [679] you and Mr. Allen were concerned?

A. There were two occasions at which it might have been called at an end. One was one evening, or one early morning, about 3 o'clock in the morning. He came down to my home and was very noisy and belligerent, and somewhat under the influence of intoxicating liquor. He awakened my—well, my wife was awake, he'd phone me just before that, and he was very noisy, and I finally let him in, because I didn't want to disturb the neighborhood.

Q. About when was this?

A. This was sometime late in November; I couldn't fix the exact date.

Q. What year? A. 1946.

Q. After you had run out of money for the Pilot?

(Testimony of Francis Clayton Keane.)

A. Yes, and he got to telling me in a loud tone of voice the position we were sitting in, and if I might digress there for a moment, my wife had gotten up and come out also, she was present, and his proposition, he finally made the statement that, he says "We're in terrible shape here, and we're going to be jammed up; it will take \$200,000 to clean us up, and I've got the \$200,000, and you haven't". He says "I want you to turn everything over to me, and I'll take care of it", and I said "No, I won't do it". We argued some more, and I ended the conversation by telling him [680] that I thought he was born on the wrong side of the railroad tracks and had never gotten across. Now, that was one of the incidents that might have terminated our relations. The other was when he transferred the bank account, by action of the board of directors of the Lexington Silver Lead in adopting a resolution to the bank stating who could draw checks. I've never seen the resolution. The other incident was when—

Q. That was about when?

A. That was on the 26th day of December that that was done.

Q. Of 1946?

A. Yes, and about the same time, Joe Grismer—

The Court: Of December?

A. Of December, 1946; and then about the same time, at about that date, Grismer, Mullen and Evans

(Testimony of Francis Clayton Keane.) entered my office after it was closed, and removed the Extension books from the office, or removed some books from the office, a bunch of them, Evans having pointed out to them where the books were. That absolutely severed our last relation.

Q. Now, when you were associated with Mr. Allen in the Montana Leasing Company during the periods of 1945 and 1946, were you both drawing on the Montana Leasing Company account?

A. We were.

The Court: When was this? [681]

Q. During the years 1945 and 1946, when funds were being diverted from Pilot and Extension to Montana Leasing Company. A. We were.

Q. And were you both drawing substantial funds out of that account? A. At times.

Q. And were you spending money rather freely?

A. At times; too freely.

Q. Were you spending money for gambling purposes?

Mr. Etter: Now, just a minute; I'm going to object to this line of examination. If they were spending money, that's all very well, but leading questions on what he was spending it, for the purpose of exciting this jury, and that's the only purpose of this examination—

The Court: Just a moment; the objection to the question as leading is sustained, and the answer is stricken.

Q. For what purposes were you spending this

(Testimony of Francis Clayton Keane.)

money that you described you spent rather freely?

Mr. Etter: I'm going to object to that also; the question of what happens after the conversion, if there is a conversion, we could be here for a year—

The Court: Well, that would be true if all the parties admitted conversion. This witness admits conversion. [682] It may not be necessary, but in order to find out how the money was spent, the jury may be aided by testimony as to what was spent. The objection is overruled.

Mr. Etter: Exception.

A. (The Witness): Will you read the question please, Mr. Reporter?

(Whereupon, the reporter read the last previous question.)

A. Living expenses, drinking, some gambling; sometimes the gambling was excessive.

Q. And that applies both to Keane and to Allen?

A. I would say definitely it applied to both of us.

The Court: Just a moment; that again is leading, and is stricken.

Q. Does that apply to both of you?

Mr. Etter: Well, now, if there's any difference in the way that question—

The Court: There isn't much difference. You may ask who did the spending.

Q. Well, who wrote the checks? Who wrote those typed checks for living expenses?

(Testimony of Francis Clayton Keane.)

A. Both of us.

Q. And for drinking and gambling?

A. Both of us.

Q. And were large amounts spent in the mining operations? [683] A. Yes.

Q. That's the mining operations of the Montana Leasing Company? A. That's correct.

Q. Can you identify the signatures on Exhibit 42, the Delaware Mines Corporation bank signature card?

The Court: Is that identification?

Q. Identification, yes.

A. Those are the signatures of J. A. Allen, myself, that is, F. C. Keane, and William Mullen Sr., who is now deceased.

Q. And I also refer to 43 for identification, it's been identified as the Lexington Silver Mines, Inc., card; can you identify those signatures?

A. The first one is J. A. Allen; the second one is mine, F. C. Keane, and the third one is Irene Vermillion.

Q. I'll show you Plaintiff's Exhibit 44 and ask you if you had anything to do with the direction of the preparation of that deposit slip?

A. No.

Q. On that date? A. No.

Q. Can you identify exhibits 84—

The Court: Are these for identification?

Q. For identification, yes; 84, 86, 85—no, 84, 86 and 88? A. Yes.

(Testimony of Francis Clayton Keane.)

Q. What is exhibit 86? [684]

A. That's a letter received from Mr. Elmer E. Johnston addressed to myself, dated May 8, 1946.

Q. And now with reference to—

A. And received by me through the mails.

Q. Now with reference to Exhibit 84 can you identify that exhibit?

A. That's a letter dated April 5, 1946, written by Elmer E. Johnston and addressed to me at Wallace, Idaho, and received by me through the mails.

Q. Now, does that refresh your recollection regarding the preparation of an annual statement for the Lucky Friday Extension Mining Company.

A. Yes.

Q. What was the situation with regard to the preparation and filing of an annual statement with the State of Washington?

A. We weren't in position to make a statement.

Q. And why weren't you in a position to make a statement? A. Finances, lack of them.

Q. And was Mr. Johnston calling you and writing you to have Mr. Randall make an audit?

A. Yes.

Q. And prepare a statement? A. He was.

Q. And that was the reason the statement was not prepared? A. I think that's probably it.

The Court: What date was this?

A. This was April 5, your Honor please.

Q. Now, in connection with your failure to pre-

(Testimony of Francis Clayton Keane.)  
pare that statement, did you have any conversation with the defendant Allen? A. I did.

Q. What was that conversation?

A. We discussed it in Wallace sometime about that time, as to how we'd make up a statement, and as I recall it, he said, "Leave it to me, I'll take care of it with Johnston, have him do it."

Q. And did you then see the financial statement that was filed? A. No.

Q. Were you and Allen out of the state for a period there in March of 1946, do you recall?

A. Yes.

Q. Back where?

A. Well, I was in Bismark and Chicago; Mr. Allen was in Chicago. I was in Bismark for about ten days.

Q. And this demand for a statement began about that time? A. During our absence.

The Court: It's getting awfully close to 4:30.

Mr. Stocking: Yes. I think I'm about through, but I would like the opportunity of being able to check through [686] these exhibits. Just one moment. I did want to offer these, 84, 86 and 88.

Mr. Etter: The objections are renewed on all of these exhibits as heretofore made, on the ground that they're hearsay, letters addressed to Mr. Keane, not binding upon the defendant Allen, pure hearsay and incompetent and irrelevant, don't go to prove any of the issues in this case under the counts of the indictment as laid.

(Testimony of Francis Clayton Keane.)

The Court: Ruling reserved.

Q. (By Mr. Stocking): One more exhibit, exhibit 80; can you identify that exhibit and the return card attached thereto?

A. That's a copy of a letter written by Mr. Johnston and registered, and was received at the postoffice by Mrs. Vermillion, she having signed my name and her own as my agent.

Q. Do you recall receiving this letter?

A. Yes, I got that letter, the original of it.

Mr. Stocking: We'll offer 80 in evidence.

Mr. Etter: I'll object to the admission of this exhibit on the grounds previously stated, it's incompetent, irrelevant and immaterial, it shows on its face that Allen is not privy to any matter set forth therein, no proper foundation has been laid for the admission of the exhibit, it doesn't go to prove any count so far as alleged against [687] Allen in the indictment, and as to him it's pure hearsay.

Mr. Stocking: It was identified by the witness Johnston and refers to the return of his stock certificates, and he connected the defendant Allen with that transaction.

The Court: I don't think it makes any difference whether I admit this or reject it. The government wants it in; the defendant strenuously objects. For the time being, at least, I see no reason to admit it. Ruling reserved as to 80, although I may say that I don't think it makes any difference whether I admit it or keep it out.

(Testimony of Francis Clayton Keane.)

\* \* \*

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: I may say as to offered exhibits for identification 84, 86 and 88, that I am much of the opinion that each and all of them are admissible. On many theories I've preferred to wait until later, but if I were compelled to make a ruling at this moment, I would rather confidently make the ruling for admission. I see no hurt to anyone if [689] I keep them out temporarily, but I'm letting counsel know that it would seem to me that under the laws relative to this type of a case, in view of the evidence as it is now, that such are admissible.

Now, as to exhibit 80, I think it's admissible. I haven't been able to find out whether the government wants it in, or have I been able to suspect why the defendant wants it out. I know there have been one or two exhibits that the defendant has objected to successfully that my own guess is that the defendant will be trying to get in later, so I think perhaps some of the objections have been on the theory that everything should be objected to, and maybe the court will admit those that the defendant wants in, and the defendant will have both the exhibit and the objection, but frankly, as far as 80 is concerned, I'm not particularly apt to admit it, because I don't know why anyone wants it in.

(Testimony of Francis Clayton Keane.)

Mr. Stocking: It has reference to the specific certificate numbers.

The Court: Oh, I recognize that. It's already in evidence by Mr. Johnston's testimony. If you think the jury is going to be persuaded by that exhibit you're very different than am I. Now, I would rather appreciate—one of the reasons I wanted you to stay, I'd rather appreciate finding out now what exhibits are in, if I can find out [690] with the clerk while you're here.

(Whereupon, the Court ran through the list of exhibits so far identified.)

\* \* \*

(Whereupon, at 5 o'clock p.m., the Court took a recess in this cause until Monday, June 13, 1949, at 10:15 o'clock a.m.) [693]

(Spokane, Washington, Monday, June 13, 1949, 10:15 o'clock a.m. Sixth day of trial.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

F. C. KEANE

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: You may cross-examine.

Cross-Examination

By Mr. Etter:

Q. I think you stated that you're an attorney at law—— A. I am.

Q. —in the State of Idaho, Mr. Keane?

A. Yes.

Q. And did you say how long you had been practicing in the State of Idaho?

A. 29 years.

Q. 29 years? A. Yes.

Q. All that time have you been practicing at Wallace, or other places? A. And Moscow.

Q. Did you commence your practice at Moscow, Idaho? [694] A. I did.

Q. In what year, Mr. Keane? A. 1920.

Q. And when did you remove your practice to Wallace, Idaho? A. In 1931.

Q. Did you have any reason for that at the time, Mr. Keane? A. To make more money.

Q. I see; and you associated with Mr. Walter Hanson? A. I did.

Q. You said, I think, that you had known the defendant Allen for a period of about eighteen years? A. That would be correct.

Q. You didn't have any business dealings with

(Testimony of Francis Clayton Keane.)

Mr. Allen in the forepart of your acquaintanceship with him, did you, Mr. Keane?

A. I think there were some, yes.

Q. There were some?

A. Yes; I've forgotten the details in connection with it, but it was something over a property, I think the name of it was the Silver Cable; I'm not sure of that name, either.

Q. You did some legal work for him?

A. Not for him, no. Mr. Hanson, and as a consequence myself, were representing I think a party by the name of Lang.

Q. And they were involved in the negotiations?

A. They were involved in the litigation, yes.

Q. I see. The first time, I suppose, that you had any business dealings of any consequence, according to your testimony, was the latter part of 1942 or the spring of 1943? A. That's correct.

Q. Now, at about that time isn't it true, Mr. Keane, that Mr. Allen was in charge of operations of the Callahan Consolidated Mining Company?

A. Correct.

Q. And the Callahan Consolidated Mining Company office is located on the second floor of the Gyde-Taylor Building? A. That is correct.

Q. And in relation to your office, isn't it true that your office is toward the front of the building facing the street, and the other office is toward the back of the building?

Q. My office faces on 7th Street; part of the

(Testimony of Francis Clayton Keane.)

Callahan Consolidated office at that time faced on Cedar Street; most of it, however, was inside.

Q. And that is just down the hall from your office? A. That is correct.

Q. And you during that time handled some work for the Callahan Consolidated Mining Company that had to do with the legal work surrounding the construction and acquisition of a mill, isn't that about the size of it? A. That's right. [696]

Q. And did you have any other legal work at that time in connection with the Callahan?

A. Oh, there were various matters that Mr. Allen and I discussed from time to time incident to the operation of the Callahan Consolidated.

Q. Incident to the operation of the Callahan?

A. Yes.

Q. And when there was necessity for legal advice Mr. Allen called on you, isn't that so?

A. That is correct.

Q. Now, at that time, approximately 1942 or 1943, were you not counsel for numerous mining companies? A. I was.

Q. And would you name those companies for us, Mr. Keane?

A. Well, I had retainers I think from the Clayton Silver Mines—

Q. Clayton Silver Mines?

A. And possibly Silver Syndicate. I don't know whether the retainer had started at the time that we're discussing or not.

(Testimony of Francis Clayton Keane.)

Q. I see, and were there some other companies likewise? A. No.

Q. And you were likewise not only counsel, as you say, for some of those companies, but you were personally interested in other companies upon which you were serving in one [697] capacity or another?

A. That is correct.

Q. You were then on the board of directors of the Big Friday, so-called, were you not?

A. That's right.

Q. And also on the board with you were Mr. John Sekulic and Judge Featherstone of Wallace, and Chas. Horning, who has testified here?

A. And I think John C. White or J. C. White of the White and Bender Company, were the board of directors at that time.

Q. You were on the board of directors of the Big Friday? A. Yes, from its inception.

Q. And likewise you were then the president and on the board of directors of the Independence Lead Mines Company? A. That is correct.

Q. And the office of the Independence Lead Mines Company was in your office?

A. That is correct.

Q. And that is true likewise of the Friday, or not? A. No.

Q. Was it true of any of the other companies?

A. No.

Q. Were any of the books and papers of any of

(Testimony of Francis Clayton Keane.)  
the companies to which you've made reference kept  
in your office? A. No. [698]

Q. Independence?

A. Independence was, yes; I stated that their  
office was in my office.

Q. That's correct.

A. Necessarily the books would be there, too.

Q. That's correct. Now, were there any other  
companies, Mr. Keane, that you were associated  
with at that time?

A. I think I was a director of the Golconda.

Q. You were a director likewise of the Golconda?

A. Yes.

Q. And was Mr. Horning likewise a director?

A. He was not.

Q. Judge Featherstone?

A. Judge Featherstone was.

Q. John Sekulic?

A. John Sekulic was not.

Q. And any other companies that you can recall  
that you were associated with at that time?

A. There probably were other companies that  
I was interested in in one way or the other, but I  
don't recall them.

Q. Did you become associated in the Delaware  
Company about that time?

A. That was after—I imagine that was started  
sometime in the summer or fall of 1943.

Q. Summer or fall of 1943? [699]

A. Yes.

(Testimony of Francis Clayton Keane.)

Q. And Mr. Allen at that time owned about sixty per cent of the stock of the Delaware, is that correct?

A. I think that he probably owned more than that of it.

Q. He owned a substantial and controlling interest in the Delaware Mines?

A. Definitely so, yes.

Q. You, Mr. Keane, did you own any stock at all in the Delaware Mines?

A. Well, not at that time.

Q. And did you do some legal work for Mr. Allen in handling a sale or contract arrangement between the Delaware Mines and the Callahan Consolidated? A. Not that I recall.

Q. Not that you recall; did you do some legal work for him in the Delaware?

A. I don't know. I would have to search the records on that.

Q. But at that time you had a substantial association with numerous mines in that community?

A. That is correct.

Q. And so far as the law practice and business was concerned, you had a sizable share of it having to do with mining operations in that community?

A. I had; with my retainers and my other business I was progressing. [700]

Q. Now, do you recall anything about the contract arrangement between the Delaware and the Callahan Consolidated, Mr. Keane?

(Testimony of Francis Clayton Keane.)

A. I think—now, as I say, my recollection may be a little faulty on it, but I think that the Callahan purchased the Delaware ground. The Delaware owned a bunch of claims up on the hill north of Wallace, and they purchased those claims for the sum of \$75,000, which was to be paid out of royalties.

Q. Out of royalties from Callahan Consolidated?

A. From Callahan Consolidated.

Q. Over to Delaware? A. That's right.

Q. And those royalty payments commenced and they were being paid in 1943 and 1944, is that correct?

A. I wouldn't say as to the date when royalties—or when the Callahan Consolidated actually became a producer. It did produce, however.

Q. Now, isn't it true that after you became associated with Delaware that the records of the Delaware were kept in your office?

A. That is not my recollection, no.

Q. Were there any records of the company kept in your office at all?

A. For a long time Mr. Allen's stock in the Delaware, it was [701] in a black, one of these small black bags, and he told me that that was stock in the Delaware—

Q. I see.

A. —that that was there, and I might add that very frequently there were checks of the Delaware, signed by Mr. Allen left in my office.

(Testimony of Francis Clayton Keane.)

Q. And isn't it true that these checks you're talking about that were left, signed by Mr. Allen, they were not only signed in blank and left in your office by Mr. Allen, but also you left some checks either in your office or next door with your name signed on them?

A. In with Miss McLean; she was McLean at the time, which is now Mrs. French.

Q. I believe she testified.

A. Yes; we had checks both ways on all accounts.

Q. And after you became associated and an officer with Delaware, wasn't it customary on occasion, when it was necessary, for you to sign your name on Mr. Allen's checks or for Mr. Allen to sign his name on one of yours?

A. That's what I stated a moment ago.

Q. That was the arrangement that was had?

A. Yes.

Q. Now, was it customary likewise that the checks, the royalty checks coming from the Callahan Consolidated to the Delaware, were deposited by somebody in your office? [702]

A. At times they were. At times Mrs. French made such deposits.

Q. Mrs. French made them, and at other times—

A. —Mrs. Vermillion, and possibly on occasion I might have done it.

Q. I see. Now, do you know offhand, Mr. Keane, how much money came into the Delaware Company

(Testimony of Francis Clayton Keane.)  
as the result of royalties in, say, the year 1945?  
Have you any rough idea of it at all?

A. No, I would have to check. I can get those records for you if you wish them, but I would have no independent recollection of it.

Q. Well, this may be possible, to refresh the recollection, would you say that approximately there was in the neighborhood of \$10,400 that was paid in Delaware royalties during the year 1945?

A. Well, I couldn't—it would be a guess, at best. I don't know.

Q. You don't have any recollection?

A. No independent recollection as to the amounts of money that were involved.

Q. All right. Now, at the time that Mr. Allen was interested in the Delaware did he also mention to you that he had some interest or formerly had some interest in the Lexington Silver Mines property in Neihart? [703] A. Yes.

Q. You discussed that with him a number of times? A. Oh, yes; yes.

Q. And didn't he tell you in 1945 or 1944, I'm not just sure which, that they were shut down because of problems resulting from the war, something like that?

A. No. We did have conversations with reference to the Lexington, but the reason the Lexington was shut down was that they had ran out of ore.

Q. That was it? A. Yes.

Q. It had been a large producer?

(Testimony of Francis Clayton Keane.)

A. It had produced substantial sums of money.

Q. Well, over a million dollars in one year, wasn't it?

A. Well, now, that would be a guess, again. I know that it was very substantial, though.

Q. Very substantial? A. Yes.

Q. And they had run out of ore in the particular workings which they had been working?

A. That is correct.

Q. And you and Mr. Allen had some discussion about operating that property, isn't that so?

A. That's correct. Now, just a second; not operating the Lexington property; it was with reference to the procurement [704] of some other claims lying contiguous to and east of the Lexington holdings.

Q. And what were you discussing particularly about the acquiring of those claims?

A. The proposition of taking a lease on the dumps and running the dumps on the Benton group, and I think that—

Q. Ripple?

A. Yes, Ripple was in it, and the Spokane-Idaho, I think; there were a group of them, and I don't want to tie myself as to the names of them.

Q. No; just as you remember them.

A. Yes.

Q. But there were a number of claims that you discussed that were adjacent? A. Yes.

Q. And did you and Mr. Allen discuss the possibility of the organization of a corporation that

(Testimony of Francis Clayton Keane.) would take in all of that property, including the Lexington and the adjoining claims the names of which you're not sure?

A. I think that was subsequent.

Q. Do you remember about what time?

A. Now, then, so that there's no mistake with reference to it, we did discuss the matter of the formation of what was called the Montana Leasing Company, and a charter was granted that company by the State of Montana. [705]

Q. It was organized as a corporation, was it not?

A. It was organized as a corporation, and we carried on our operations up until the 5th of October as that corporation.

Q. As that corporation?

A. As the corporation, yes.

Q. The 5th of October of what year?

A. '45.

Q. Of '45?

A. Of '43. Now, all of these matters that you've been discussing here relate to 1943.

Q. All right, sir; so until October of '43 you operated pursuant to your corporate structure and corporate organization?

A. Well, it was a semi-corporate structure.

Q. I see.

A. Some of the details incident to actually perfecting the organization were never completed, but they were details, and Mr. Allen and I at that time owned all of the stock in the Montana Leasing

(Testimony of Francis Clayton Keane.)  
Company, and consequently we let it operate very loosely.

Q. I see, and in 1943 or 1944 did you have some conversation with respect to using the money of the Delaware Mines Corporation and the Independence Lead Mines Corporation in the development of that property? A. Yes, we did. [706]

Q. And didn't you enter into an arrangement whereby Mr. Allen through his ownership and substantial control of Delaware agreed that the smelter returns and the money involved in the purchase contract with Callahan, being in total about \$75,000, would be deposited toward the development of this property?

A. No. Well, finish your question there, so that I can answer it, or do you want me to go ahead and state how that Lexington, I mean the Delaware, what that Delaware deal was?

Q. Well, yes, if we can find it here. Well, was there an agreement made for the Delaware to invest any of its money in the Montana Leasing Company?

A. Yes.

Q. And was likewise there an agreement on your behalf that you would invest money of the Independence? A. That was not the agreement.

Q. All right, what was the agreement?

A. The agreement was that we would invest the monies that the Independence had in the property, and treat it as a loan to this operation over there.

Q. Treat it as a loan to the operation?

(Testimony of Francis Clayton Keane.)

A. Yes, that was the original agreement on it.

Q. So far as the Independence was concerned?

A. That's right. [707]

Q. Now, in the original agreement that was made with Independence it was likewise understood, was it not, that the loans that the Independence made to the Montana Leasing Company, a corporation, would be paid back at the rate of 5 per cent interest, and on the basis of the returns realized from any ore coming out of the Montana Leasing property?

A. The thought, and as we discussed it, was that when the Montana Leasing Company became financially able to carry itself, that these loans would be paid back out of proceeds realized from the operation of the Montana Leasing Company.

Q. And when, do you recall with any approximation, the date that you finally determined or agreed that that would be done?

A. Well, in the first place, or in the first instance, when those advances were made Mr. Allen put up all of the stock which he had in the Delaware Company as security, as added security, in addition to the obligation of the Montana Leasing Company, as security for the repayment of that money. Now, in addition to that, and I don't recall the exact dates, we purchased, or Mr. Allen arranged to purchase some 600,000 shares, if I recall it, of Baumgartner's stock in the Delaware Company. That purchase was made on payments of a thousand dollars every two

(Testimony of Francis Clayton Keane.)  
or three months; I've forgotten the details of it.  
The escrow was in the [708] Idaho First National  
Bank, and it was paid with checks drawn on the  
Montana Leasing Company.

Q. And you have a very distinct recollection of  
those occurrences?

A. Well, I know that they occurred, yes.

Q. Yes, you remember them very distinctly?

A. Well, I paid part of the money into the bank  
there myself on it.

Q. That's what I mean. A. Yes.

Q. And as part of this arrangement likewise  
having to do with the agreement that Independence  
had with Montana Leasing, Mr. Keane, didn't they  
—under the arrangement that was made in 1943  
wasn't there some agreement that Montana Leasing  
would likewise give them a stock interest, that is,  
Independence, in the organization of the group of  
claims, in the event that a corporate organization  
was formed?

A. Will you read that question?

Q. Well, let me put it this way;

A. All right.

Q. Did the Montana Leasing agree that Independence  
might likewise be entitled to a certain  
stock interest in the event that all of the properties  
were combined into a new corporate organization?

A. Not at that time. [709]

Q. Not at that time? A. Later, yes.

(Testimony of Francis Clayton Keane.)

(Whereupon, copy of charter and articles of incorporation of Montana Leasing was marked Defendant's Exhibit G for identification.)

Q. Mr. Keane, I'm going to hand you the defendant's "G" for identification, and ask you if you've seen that before?

A. I've seen that or a duplicate of it, yes.

Q. And will you state what that is?

A. That's a charter and copy of the articles of incorporation of the Montana Leasing Company issued by the Secretary of State of the state of Montana.

Q. Yes. Did you prepare these originally?

A. No, I did not.

Q. Mr. Sherman Smith prepared them?

A. Sherm Smith, that's correct.

Q. But these are, and you've seen that before?

A. I've seen that or one identical with it.

Mr. Stocking: No objection.

Mr. Etter: At this time I'll offer the Defendant's Exhibit G in evidence, your Honor.

The Court: Exhibit G admitted, no objection.

(Whereupon, Defendant's Exhibit G for identification was admitted in evidence.)

(Whereupon, copy of minutes of [710] organization meeting of Montana Leasing was marked Defendant's Exhibit H for identification.)

Q. Handing you, Mr. Keane, Defendant's Ex-

(Testimony of Francis Clayton Keane.)

hibit "H", will you tell me what that is, please, and identify it?

A. Copies of the organization meeting of the Montana Leasing Company.

Q. And the signature appearing thereon, F. C. Keane, is that your signature?

A. My signature, and the other signature as secretary is William Mullen; that is, or was, his signature.

Q. You recognize that? A. Yes.

Mr. Stocking: We have no objection.

Mr. Etter: I move the admission at this time, your Honor, of Defendant's Exhibit H.

The Court: Exhibit H is offered; is there any objection?

Mr. Stocking: No objection.

The Court: Exhibit H admitted.

(Whereupon, Defendant's Exhibit H for identification was admitted in evidence.)

(Whereupon, lease between Lexington Mining Company and Montana Leasing Company was marked Defendant's Exhibit I for identification.)

Q. I hand you for identification Defendant's "I", Mr. Keane; [711] I'll ask if you can tell us what that is?

A. That's a lease that was entered into between the Lexington Mining Company on the one hand, as lessor, and the Montana Leasing Company as lessee.

(Testimony of Francis Clayton Keane.)

Q. You recall that lease agreement?

A. Well, I don't know as I particularly do. I knew that such a lease was entered into.

Q. You signed, didn't you, at that time?

A. I don't know whether I did or not; I might have done it, and again I might not have, but it was the lease under which we leased the property of the Lexington Mining Company over there, that is, their personal property.

Q. For operation by the—

A. For operation of these dumps.

Q. —by the Montana Leasing Company, a corporation?

A. Well, at that time, yes.

Q. That was in June of 1943, it was a corporation.

A. That would be right. I don't believe the organization of it had been completed at that time, of the Montana Leasing Company; I don't believe that we had a charter. Would you show me that exhibit of the articles of incorporation for a minute, and see what date—

Q. July of 1943, you're right.

A. July of 1943; that's right.

Mr. Stocking: We have no objection. [712]

Mr. Etter: I move at this time that Defendant's "I" be admitted, your Honor.

The Court: Exhibit I is offered, there's no objection; admitted.

(Whereupon, Defendant's Exhibit I for identification was admitted in evidence.)

(Testimony of Francis Clayton Keane.)

(Whereupon, minutes of meeting of directors of Independence was marked Defendant's Exhibit "J" for identification.)

Q. (By Mr. Etter): I hand you for identification Defendant's "J" and ask you to examine that, **Mr. Keane.**

A. That's a photostatic copy of minutes of a meeting of the Independence Lead Mines Company, of the directors, held on June 23, 1943.

Q. Is that a—

A. It looks to me to be a photostatic copy of—

Q. But a substantially correct copy?

A. Well, I would have to compare it, of course, with the original to say that it was, but that's a photostatic copy of my signature, and also a photostatic copy of Mr. Evans' signature, too.

Q. Such a meeting was held?

A. I think that it was, yes.

Q. And such matters were discussed?

A. I think that's correct. [713]

Q. And incorporated in the minutes which you signed?

A. I think that is correct, yes.

Mr. Stocking: We have no objection.

Mr. Etter: I move that Defendant's Exhibit "J" be admitted in evidence, your Honor.

The Court: Exhibit J admitted.

(Testimony of Francis Clayton Keane.)

(Whereupon, Defendant's Exhibit J for identification was admitted in evidence.)

Mr. Etter: For the purpose of following continuity, with the Court's permission I'd like to read this to the jury.

(Whereupon, Mr. Etter read Defendant's Exhibit J to the jury.)

(Whereupon, minutes of meeting of directors of Independence, 10/12/44, was marked Defendant's Exhibit "K" for identification.)

Q. Handing you Defendant's K for identification, Mr. Keane, will you examine that?

A. It's the minutes of the meeting of the Independence Lead held on October 12, 1944, signed by Glynn D. Evans as assistant secretary and myself as president.

Q. Do you recall such a meeting, Mr. Keane?

A. I think so. The photostatic copy does not include Mr. Lakes' statement, which I think was in writing.

Q. But this is a substantial account of the meeting as you [714] remember it?

A. Outside of the fact that Mr. Lakes' report is not attached.

Q. Other than that, these are the minutes?

A. Right. They wouldn't be the minutes without a copy of his report.

Q. Aside from that, however, this is a substantial representation of what occurred?

(Testimony of Francis Clayton Keane.)

A. That is right. That's what I stated.

Mr. Stocking: We'll object to this Exhibit K on the grounds that it's not material to any issue in this case; it's on a matter that isn't proper cross-examination.

The Court: It's not offered yet; your objection is premature.

Mr. Etter: At this time I'll make an offer, your Honor.

The Court: All right; the objection you made you wish to apply?

Mr. Stocking: I make the objection which I just stated.

The Court: All right.

Mr. Stocking: It appears to be a record of the Independence Company.

The Court: I do not see how it's proper cross-examination of this witness.

Mr. Etter: It may be, your Honor, that it should be [715] put in on his direct testimony. If they object on that ground we'll withhold it at this time.

The Court: Objection sustained on "K" on the ground it apparently touches some matter that was not involved in Mr. Keane's direct examination.

Q. Pursuant to the agreement as indicated by Defendant's Exhibit J, Mr. Keane, the first meeting authorizing the loaning of money to Montana Leasing, isn't it true that the Independence Company then did put substantial funds into the operation of the Montana Leasing pursuant to this resolution?

(Testimony of Francis Clayton Keane.)

A. May I see the resolution once more?

Q. I thought you recalled it.

A. Well, I probably do, but I want to be certain that I do, counsel. That is correct.

The Court: That is Exhibit J?

Q. (By Mr. Etter): Exhibit J, your Honor. I'll ask you, Mr. Keane, if pursuant to that resolution in 1943 the Independence didn't advance to the Lexington, or I mean the Montana Leasing, the sum of approximately \$25,000?

A. I couldn't state what sum was advanced without having additional records. It was a substantial sum of money, yes.

Q. And pursuant to the resolution, in the year 1944 there was advanced the sum of \$65,000 approximately to the Montana Leasing? [716]

A. As I say, I would have to check records as to amounts. I know there were substantial advances made from time to time.

Q. And that in the year 1945 there was a total of approximately \$73,000 or \$74,000 advanced pursuant to the resolution, to the Montana Leasing Company?

A. I'm not confining myself to the amount; again there was a substantial sum of money advanced.

The Court: How much was that?

Q. Approximately \$73,760. Do you recall, Mr. Keane, whether or not you caused an audit to be made of the books of the Independence having to

(Testimony of Francis Clayton Keane.)  
do with this transaction and others, on or about  
March of 1947? A. I possibly did, yes.

Q. You possibly did? A. Yes.

Q. And the audit was made by Mr. L. J. Randall, is that not so, a certified public accountant of Wallace, Idaho?

The Court: Audit of what concern?

Q. The Independence Lead Mines Company, pertaining to this transaction and other transactions.

A. I would want to see the audit, necessarily, before I'd be in a position to testify to it.

(Whereupon audit of Independence made by Randall, 1/1/43 to 12/31/46 was marked Defendant's Exhibit "L" for identification.) [717]

Q. I'll hand you Defendant's "L" for identification, and ask if you can tell me what that is, Mr. Keane?

A. An audit report made by Mr. Randall, certified public accountant, for the years ending December 31, '43, the years '43, '44, '45 and '46.

Q. And isn't it a fact that this audit was retained in your office with your files after it was made?

A. I couldn't tell you one way or the other.

Q. You have seen this audit?

A. I imagine it was delivered at my office. I don't recall having seen it.

Q. And this is Mr. Randall's signature that appears on the audit?

(Testimony of Francis Clayton Keane.)

A. Let me see it once more. I'm satisfied that it is.

Q. Excuse me?

A. Yes, that is his signature. He writes worse than I, is the reason I know.

Q. Now I'll call your attention to the page in the exhibit which is entitled Schedule A-1, and I'll ask if you will look at that and tell me what it represents, Mr. Keane?

A. It's supposed to represent an analysis of advances to Montana Leasing Company for the period January 1, '43, to December 31, '46.

Q. And have you examined those figures, Mr. Keane?

A. I wouldn't know anything about the figures if I did examine [718] them.

Q. I see.

A. I wouldn't know whether they were correct, or have any idea.

Q. Isn't it true that you caused a copy of this audit to be attached to a 10-K report required by the Securities and Exchange Commission, signed the same, and filed it with the Standard Stock Exchange?

A. That's within the realm of possibility.

Q. You believe you did that?

A. I say, it's within the realm of possibility. I have no independent recollection of having done so.

Q. You have no independent recollection of having done so?

(Testimony of Francis Clayton Keane.)

A. No, but it probably was done.

Mr. Stocking: May I ask a preliminary question—

The Court: You may.

Mr. Stocking: —concerning the Defendant's L.

### Voir Dire Examination

By Mr. Stocking:

Q. Mr. Keane, on the schedule A-1 which Mr. Etter showed you was shown an advance to Montana Leasing Company by Independence Lead Mines of \$73,760.18. Do you have any independent recollection as to during what months that sum was advanced?

The Court: Of 1945?

Q. Yes. [719]

A. It was done sometime prior, if I recall, to the organization and the disposition of stock in the Friday Extension, or about that time. I'm not sure, however, of that.

Q. That's your best recollection?

A. That is my recollection.

### Cross-Examination

(Continued)

By Mr. Etter:

Q. I might ask you, Mr. Keane, wasn't there—you said that's your recollection. Is it your statement that all of this money in 1945 was invested

(Testimony of Francis Clayton Keane.)  
in Montana Leasing before the organization of the  
Lucky Friday Extension?

A. I didn't say that. I said it's my recollection,  
and that's independent of any records.

Q. Independent of any records?

A. Yes, is that most of it was made prior to the  
organization of the Lucky Friday Extension Com-  
pany.

Q. Wasn't there a substantial sum of money,  
approximately \$22,000 or \$23,000, that was realized  
from sale of stock, that was invested in this com-  
pany after August of the year 1945?

A. That's possible.

Q. That's possible? A. Yes.

Q. So that in that event, on that statement,  
there could have been, on your present recollection,  
approximately a third of this total put in— [720]

A. That is possible.

Q. —in August or September, isn't that so?

A. Well, that might be possible. As I say, I have  
no independent recollection of any specific advances  
or transfers from one place to another.

Q. That was long after there was any organiza-  
tion of Lucky Friday?

A. Well, it was about the time of the organiza-  
tion, along in there, and prior to the time that there  
was actually a good market on Friday Extension.

Q. Yes.

A. That market got good, as I recall it, in the  
spring of '46.

(Testimony of Francis Clayton Keane.)

Mr. Etter: I'll offer the Defendant's "L" at this time.

Mr. Stocking: We'll object to Defendant's L as not being a complete accounting report of the matters which might pertain to issues in this case or which would be proper on cross-examination of this witness. The only matter that I can see which would be important or which might touch upon it was this advance of \$78,000 during 1945. This witness on my questioning indicated that that money had all been advanced, to his best recollection, prior to the date of incorporation of Extension. I'm objecting to it on the grounds of materiality also.

Mr. Etter: I'd like to call the Court's attention [721] to part of the record the other day, when he was asked about the advances in the records in evidence of \$10,000 to the Independence Lead Mines by Pilot, and the Court said "What company" and the witness answered "Independence Lead Mines Company, that was advanced." Question "Who was Independence Lead Mines Company at that time?" Answer "Well, I was in charge of it at that time."

The Court: Counsel, I'm not interested in that. This witness testifies that that probably is an audit, that it is Mr. Randall's signature, that he doesn't know about the correctness, that he doesn't know if he ever read it, that it probably was left in his office, that quite possibly he attached a copy of it to a report that was filed. Now, on the basis of that am I permitted to bring it in evidence? If Mr.

(Testimony of Francis Clayton Keane.)

Randall were here and testified that that was correct, I might be permitted to do it, but on the basis of this situation—

Mr. Etter: We'll withhold it, your Honor, at this time.

The Court: Are you withdrawing the exhibit?

Mr. Etter: I'll withdraw the offer at this time.

The Court: All right, it's withdrawn.

Q. (By Mr. Etter): You say that what you're saying, then, Mr. Keane, is that you don't have any independent recollection of this money being transferred or loaned? [722]

A. Well, I know that a very substantial sum of money was transferred.

Q. But that's all?

A. As far as particularizing as to the year or the amount that was transferred in any one year, I couldn't do it. It would be a guess, that's all.

Q. In other words, what you're saying is you wouldn't know what was advanced in 1943, or 1944, or 1945, or 1946, would you?

A. No, I would not.

Q. Don't remember anything about those items except that there was an amount advanced of substantial size?

A. I don't know whether any money was advanced in 1946.

Q. Well, leaving 1946 out.

A. I know there was money during '43, '44 and '45; now, the amounts in any specific year I couldn't give you.

(Testimony of Francis Clayton Keane.)

Q. And you don't remember about this audit?

A. Well, I assume that that is an audit.

Q. But you're not sure of anything?

A. If I recall correctly I've never gone over that audit before.

Q. Is there any reason, Mr. Keane, that you have no recollection of any of these things?

A. Yes.

Q. What is it? [723]

A. Intoxication.

Q. During what period of time?

A. Oh, from shortly after Mr. Allen and I were very active together I drank very heavily, up until the fall of '47.

Q. Until the fall of '47?

A. That is correct; very heavily. I was practically a common drunkard.

Q. I see; you don't recall any of these things, then?

A. I recall some of them, yes. I had moments of sanity at intervals, but I was drinking very heavily.

Q. And these things that you testified to yesterday about Mr. Allen's participation with you, you recall those all distinctly, as being periods of your sanity? A. What?

Q. Those were periods of sanity that you remember?

A. Not necessarily, Mr. Etter. I recall those

(Testimony of Francis Clayton Keane.)

incidents. There's numerous other things that I recall during that period of time.

Q. Every incident in which Mr. Allen had any participation with you— A. Oh—

Q. —just a minute; in the Lucky Friday Extension, you remember that, don't you?

A. Oh, no, I couldn't possibly remember—

Q. But— [724]

The Court: Let him finish.

A. —all of the times, but I've had conversations with Mr. Allen; where we had them, or who was present, or what we were doing, it was a matter of daily conversations.

Q. I see. Matter of fact, you've probably forgotten just as much as you've testified to, is that it?

A. Probably have. I wouldn't be able to settle a case one way or the other on that.

Q. But you probably have?

A. Well, it's within the realm of possibility, let's put it that way, that I have forgotten numerous things that occurred, yes.

Q. But these things that you testified to with reference to Mr. Allen the other day, there's no question of realm of possibility there; they actually occurred?

A. I recall that they did, yes.

Q. But everything else, it's within the realm of possibility?

A. No, I didn't say that. Now don't put words in my mouth.

(Testimony of Francis Clayton Keane.)

Q. Well, what is it?

A. I said that we probably had numerous conversations and numerous transactions between ourselves that I've entirely forgotten; that's what I said.

Q. Now, you stated yesterday you remember Mr. Allen gave you a \$40,000 check?

A. Yes, I recall the details of that quite distinctly. [725]

Q. Now, isn't it a fact that that check was received in your office by mail?

A. Absolutely not.

Q. And isn't it a further fact that when you met Mr. Allen you were coming from the bank and had already gotten the check, and ran into Mr. Allen and Mr. Horning coming down the street?

A. Absolutely not.

Q. And isn't it a fact you gave the \$25,000 check to Mr. Horning, and Mr. Horning took it and stapled it to a sheaf of papers he was carrying under his arm? A. Absolutely not.

Q. And you remember that?

A. Absolutely. I might point out that I had to go back to the bank a second time on that transaction, and that was the reason that you had a deposit slip there drawn to the Coeur d'Alene Mining Company or Mines Company, whatever it is, or Corporation, I guess it is, and went back and surrendered the duplicate of that and got a cashier's check. I wonder if I could have a little more water?

(Testimony of Francis Clayton Keane.)

The Court: You may. I think it's time for the morning recess, and I might say this, counsel; I had thought we might run until 12:15 today to attempt to compensate for starting at 10:15. We'll be at recess for ten minutes.

(Short recess.) [726]

(All parties present as before, and the trial was resumed.)

Cross-Examination  
(Continued)

By Mr. Etter:

Q. This condition of yours that you've told us about, Mr. Keane, did that exist when you organized or were participating in the Montana Leasing Company, a corporation?

A. I was drinking at the time.

Q. I see; but do you remember that?

A. Yes.

Q. You remember that? A. Yes.

(Whereupon, promissory note Montana Leasing to Independence, 10/14/44, for \$60,000, was marked Defendant's Exhibit "M" for identification.)

Q. I'm going to hand you Defendant's Exhibit M for identification, and ask you to look at that and tell me if you know what it is?

A. That's a note signed by the Montana Leasing Company. I signed Mr. Allen's and my own name to it, as partners, dated October 14, 1944.

(Testimony of Francis Clayton Keane.)

Q. When was this note that you've described here, when was this instrument drawn, Mr. Keane?

A. I couldn't tell you for sure.

Q. It's dated on what date?

A. It's dated October 14, 1944. [727]

Q. Isn't it a fact that you didn't draw that instrument until sometime in 1947, the latter part of 1947?

A. I couldn't answer that.

Q. All right; is it a fact that you went up to Mr. Allen's office with this instrument, said that you had been subpoenaed to testify in front of the S. E. C., and you wanted him to sign this as a partner so you could explain what happened in the Independence?

Mr. Stocking: We'll object to that as not proper cross-examination.

The Court: Overruled.

A. That is not a fact.

Q. And isn't it a fact that when you went up to Mr. Allen's office with this instrument, Mr. Allen says "There never was a partnership, and I'm not going to sign it"?

A. No, absolutely not.

Q. You signed his name?

A. I signed his name.

Q. Why?

A. I had a perfect right to.

Q. As a matter of fact, didn't you tell the Com-

(Testimony of Francis Clayton Keane.)  
mission when they were questioning you that Mr. Allen and you had signed this?

A. No, I did not.

Q. What did you tell them? [728]

A. I told them there was a note. I don't recall what my testimony was.

Q. But your testimony now is you put Mr. Allen's name on it? A. That is correct.

Q. And you wrote it so it would appear like Mr. Allen's signature? A. Absolutely not.

Q. I'll ask you if the writing isn't different?

A. No. Give me a pen and I'll demonstrate it to you.

Q. I'm just asking you.

A. I say no; the way I'd ordinarily write it.

Q. And you signed Allen's name to it?

A. That is correct.

Q. But you don't recall when you drew this note?

A. No, I would not. I would have to have Mrs. Vermillion's notebooks on it.

Q. Isn't it a fact that you didn't draw the note in 1944?

A. I couldn't answer that, Mr. Etter.

Q. You saw Allen, of course, numerous times, as you say?

A. Oh, definitely, yes, repeatedly between October of 1944 and late in the summer or fall of 1946.

(Testimony of Francis Clayton Keane.)

Q. Did you ask Mr. Allen to sign this at any time?

A. I can't tell you whether I did or whether I didn't. I would think that if he were asked to sign it at any time during that period of time, he would have promptly signed [729] it.

Q. He would have promptly signed it?

A. Yes.

Q. But you didn't ask him to sign it?

A. That is probably correct.

Q. And do you have any reason why? You saw him so many times, and as you've testified here, you and he were in all these schemes, at least that's what you say; what reason was there for not asking Mr. Allen to sign it?

A. What reason was there for to ask him?

Q. Well, you say Mr. Allen was in with you on a partnership?

A. That is correct. Necessarily either member of a partnership can bind the partnership.

Q. So you used his signature with that theory?

A. That would be right.

Q. And you say now that you never ever told anybody that was his signature?

A. I never made any such statement.

Q. All right; did you tell anybody that was Allen's signature? A. Never.

Q. What did you say about it?

A. Well, I don't know if I was ever inquired. If

(Testimony of Francis Clayton Keane.)  
there was an inquiry made, I certainly would not say that that was Allen's handwriting.

Q. I'll ask you if Mr. Denney, seated right here, didn't ask [730] you about this note?

A. He asked me questions about it, yes.

Q. And I'll ask you if Mr. Denney, sitting here, didn't ask you about Allen's signature?

A. Not that I recollect of. If he did, the answer that he would have gotten was "That's Allen's name, written by me."

Q. That's what you remember your answer was?

A. If any were asked, if a question were asked of me, that would have been my statement in reply.

Q. You don't recall now that it was asked?

A. I don't remember whether it was or whether it wasn't.

Q. Did you sign Allen's name on anything else?

A. Probably have.

Q. On any exhibit that you've examined that's been here?

A. Not that have been submitted here, no.

Q. You've examined numerous ones, haven't you, maybe 75 or 100 of them?

A. A few of them. I've examined some checks that bear his signature.

Q. Did you put his name on the checks?

A. No; written by himself.

Q. I'll ask you if you signed his name on any other instrument other than this one that I have here?

(Testimony of Francis Clayton Keane.)

A. I couldn't answer that, Mr. Etter.

Q. You don't recall any, do you? [731]

A. I don't recall whether I did or didn't.

Q. It's your statement now that you didn't go to see Mr. Allen in 1947 about this?

A. That is definite, yes; I did not.

Q. For the purpose of attempting, Mr. Keane, to refresh your recollection, do you remember that in 1947 or the latter part of it that you were subpoenaed to appear before the S. E. C.?

A. I think early in 1947 I was.

Q. All right, and I'll ask you if at that time Mr. Randall, the accountant, wasn't likewise subpoenaed?

A. I wouldn't know.

Q. I'll ask you if you remember being here in Spokane at the Davenport Hotel with Mr. Randall on the day that both of you were to testify before the Commission?

A. I have been in Spokane and at the Davenport Hotel with Mr. Randall. Now, whether it was that day or some other, I don't know.

Q. And do you recall that you discussed that matter with Mr. Randall before he testified?

A. No, I do not recall.

Q. That doesn't refresh your recollection?

A. It does not.

Q. You don't recall then calling Mr. Allen and talking with him about it at the hotel? [732]

A. Where did the conversation take place?

(Testimony of Francis Clayton Keane.)

Q. At the Davenport.

A. And Mr. Allen down at the Davenport?

Q. Yes.

A. He wasn't down at the Davenport.

Q. You don't recall that?

A. He wasn't down there, that is, in my room, or I didn't see him down there.

Q. And even though you might or might not have been at the Davenport, your recollection is now you didn't see him at his office then either?

A. That is correct.

Q. So far as this instrument is concerned, you don't believe that you talked to him about it in 1947?

A. I don't remember having talked to him so that I'm specific here.

Q. Do you recall that you talked with him at any time from the date that appears here, October 14, 1944, until the present about this, Mr. Allen, that is?

A. Not that I recall. I talked to him about that we'd have to shape that up, yes, that note.

Q. You'd have to shape this up?

A. Yes.

Q. What did he say?

A. He agreed to it the way he agreed to everything up until [733] the time we had that conversation late in 1946.

Q. Actually what he said was he agreed that those were the terms that the Montana Leasing Company entered into with the Independence, he agreed with you, didn't he?

A. Certainly.

(Testimony of Francis Clayton Keane.)

Q. He agreed that was the original agreement back in 1943? A. That's right.

Q. But he disagreed that he was a partner of yours, isn't that right?

A. Never in his life. Why was he writing checks on the Montana Leasing account?

Q. Just answer the question.

A. I say definitely no, he never denied it.

Q. He didn't refuse to sign this?

A. Never.

Q. Then when you were talking to him about it and you said you'd have to shape it up, why didn't he sign it?

A. Because I neglected to have him sign it.

Q. So you just went ahead and signed his name?

A. That's right.

Mr. Etter: I move at this time that Defendant's Exhibit M be admitted in evidence.

Mr. Stocking: We have no objection.

The Court: Admitted.

(Whereupon, Defendant's Exhibit M for identification was admitted [734] in evidence.)

Q. (By Mr. Etter): When was the first time that you heard anything about the organization of the Lucky Friday Extension, Mr. Keane?

A. Shortly before we organized it.

Q. What was your best recollection as to a month in the year that it was organized?

A. What date was it organized?

Q. 1945.

(Testimony of Francis Clayton Keane.)

A. What month? If I could see—there's an exhibit, I think. If I could see the exhibit I would have a better idea.

Mr. Stocking: It's in that state file.

The Court: Well, isn't it agreed by both sides it was organized about May, 1945?

Mr. Etter: Yes, I think that's it, but I don't want to be mistaken on it.

Mr. Stocking: Signed the 25th of May, acknowledged the 28th of June.

Q. (By Mr. Etter): The articles indicate about June, the latter part of June.

A. The latter part of June? It was several days, a few days, before that.

Q. A few days before that? A. Yes.

Q. Did you have any conversations with Mr. Horning or Mr. [735] Sekulic about the organization of the Lucky Friday Extension?

A. No. Mr. Allen handled all negotiations with reference to the procurement of the contract from the Friday, the Big Friday, and matters of that kind.

Q. Don't you recall that you and Mr. Horning and Mr. Sekulic discussed that contract prior to its organization, the organization of the Lucky Friday Extension? A. Probably casually.

Q. And when you talked about it casually, what was said by Mr. Sekulic to you?

A. I couldn't—Mr. Sekulic wasn't doing the saying; Mr. Horning was speaking for the Friday.

(Testimony of Francis Clayton Keane.)

Q. Mr. Horning was speaking for the Friday?

A. That's correct.

Q. Now, isn't it true that you stated to Mr. Sekulic that he would get a block of around 650,000 or 690,000 shares?

A. We finally determined, I was present at the time that was determined, as to the amount of stock that Sekulic and the parties interested with him were to receive. That was discussed up in the Samuels Hotel, in Allen's room.

Q. That's correct Sekulic was interested in it, wasn't he?

A. Definitely was. Now, at the time we determined how much stock was going to go to various parties, I was present in that conversation, participated in it. [736]

Q. And you were then interested in the Big Friday yourself, weren't you, Mr. Keane?

A. I was a director. My interest in the Friday at that time had been sold down to where it was practically nil, as I recall it.

Q. But you were interested as a director?

A. At one time I was very substantially interested in the Big Friday.

Q. That's right.

A. I was one of the principal stockholders; I guess there were four or five of us had the bulk of the stock that was outstanding.

Q. And for some time prior to the conversation that you had with Horning and with Sekulic and

(Testimony of Francis Clayton Keane.)

with Allen, as you say, for some time you had loaned the Big Friday certain machinery and otherwise of the Independence, hadn't you?

A. That is correct, yes.

Q. And it was a common occurrence, wasn't it, I'll ask you this, for the Independence to not only loan machinery, but to loan money to different companies?

A. Loaned some to the Callahan Consolidated.

Q. That's right.

A. On two occasions.

Q. And while you had been associated with Independence they had likewise loaned considerable money to Clayton when it [737] was first starting?

A. They had given very substantial loans and gifts to the Clayton Company.

Q. That's right.

A. That was prior to the time, however, that I was interested as a director in Independence.

Q. You were attorney, however, for them, weren't you?

A. Not at that time; I was subsequently.

Q. But the Independence operation has been predicated a great deal on investments and loans to other companies, hasn't it, rather than development of its own ground?

A. Well, its own ground—I might explain that. A shaft, or I don't know whether a shaft or a winze was sunk 500 feet and some cross cutting down at the bottom of it proved very unsatisfactory,

(Testimony of Francis Clayton Keane.)

very discouraging, and if any development at the Independence be had, it will have to be at great depth; by that I mean three or four thousand feet.

Q. But they had loaned a great deal of machinery to the Big Friday, in which you were interested?

A. They loaned machinery to Big Friday, loaned it to other companies.

Q. That's correct.

A. It was the practice at all times since I have any knowledge of Independence to make such loans.

Q. That's correct, it was a common practice. [738]

A. Well, it's a common practice in the industry up there to loan items that you have no use for, to somebody that has use for them.

Q. So this condition was existing at the time that you and Mr. Sekulic and Mr. Horning and these people were talking about the development of the Extension?

A. That would be right, yes.

Q. And isn't it true that during that conversation Mr. Sekulic said he owned the whole hill over there, something like that?

A. I think he did, yes. He might have indulged in a little braggadocio at times.

Q. Yes, that's correct, and Mr. Sekulic proposed that these claims would be located, didn't he?

A. I wasn't present at the time that those original negotiations were entered into.

(Testimony of Francis Clayton Keane.)

Q. But as part of the—

A. But as I stated here yesterday, if you'll permit me to go on, Mr. Allen called me. He had a room at the hotel, and he told me that he'd stayed up at John's the night before, and they drank a lot of Dago Red, and it evolved that John had a home-stead up there, or something of the kind, I've forgotten exactly what term he did apply to it; said to set that up into a company and develop it through the Friday. [739]

Q. So later on a contract was negotiated?

A. That is correct.

Q. And in that Mr. Sekulic's proposition of the Lucky Friday Extension locating the claims and transferring them to the Big Friday was incorporated, wasn't it?

A. I don't know whose thought that was.

Q. Well, I mean it was incorporated in the contract?

A. It was done, that's the way it was handled. Now, whose idea it was I couldn't say.

Q. But it was done, wasn't it?

A. I said that it was done; that's the way it was handled.

Q. Now, what consideration was to pass to Mr. Sekulic and these other people for the execution of that contract?

A. A block of stock, a substantial block of stock.

Q. 670,000 or 690,000 shares, isn't that about it?

A. Something of the kind. That transaction was

(Testimony of Francis Clayton Keane.)

finally consummated up in Mr. Allen's room in the Samuels Hotel, Sekulic, Allen and myself being present, as I recall it, and the exact details of it I wouldn't recall.

Q. Well, Mr. Horning and Judge Featherstone were both there too, weren't they?

A. Not on the stock transaction, no.

Q. They weren't?

A. They were not, as I recall it.

Q. Where was the arrangement made to give Mr. Horning part of [740] that stock?

A. That must have been a deal between he and Sekulic.

Q. And was there a deal also between Sekulic and Judge Featherstone to give him part of it, too?

A. I would imagine that—now, Judge Featherstone was to receive some stock.

Q. I see.

A. And it was finally determined that Judge Featherstone's stock was to come out of the Sekulic stock, the so-called Sekulic stock.

Q. Sekulic was to get this block and then it was to be cut up, wasn't it?

A. Yes. Now, I might add in there, Mr. Etter—

Q. All right.

A. —that the contract that was entered into on behalf or between the Friday X and the Big Friday and the Hunter Creek were all very advantageous to the Big Friday.

Q. They were, weren't they?

(Testimony of Francis Clayton Keane.)

A. They were very, very advantageous—

Q. Very advantageous.

A. —to the Big Friday. By the same token, they were advantageous to the other two companies because of the added depth that could be procured by virtue of the workings that the Big Friday had at that time.

Q. That's right. Now, don't you recall that the situation [741] then about that time was roughly this: That the Big Friday was to drive out toward the Lucky Friday Extension property, that's true, is it not, in the original development?

A. I don't recall whether that is correct or not.

Q. All right, what would be correct?

A. Now, the thing that is confusing me on it is this: At one time, I think it was on the 400, the Friday—it was on the 400—the Friday drove to the west out there and followed a showing for oh, three or four hundred feet. Now, that was at the time that John Sekulic was operating the Big Friday, and I had discussed with him the showing out there, and he said that it looked promising.

Q. And the situation under the agreement was to the effect that the Lucky Friday Extension would put up the money for the Big Friday to do the work?

A. The contract would have to speak for itself as to the proportion of the monies that was to be put up for the purpose of sinking that shaft, as far as

(Testimony of Francis Clayton Keane.)  
the Hunter Creek and the Friday X were concerned.  
I couldn't remember what the exact terms of the  
contract were.

Q. But the result, whatever the terms were, the  
result was that the Lucky Friday Extension put up  
considerable money to the Big Friday to do the  
work? A. That is correct.

Q. Somewhere upwards of \$90,000 finally, wasn't  
it? [742]

A. I wouldn't—again, I know that it was a substantial sum, but as far as pinning me down to any specific amount, I couldn't; it would be just a guess, Mr. Etter.

Q. Now at that time, Mr. Keane, you were, as you say, you were on the board of directors of the Big Friday? A. That is correct.

Q. Now, isn't it a fact that at that time the Big Friday was in financial plight, as it were?

A. No, I would say that it never was.

Q. It never was?

A. Now, in order to expedite the development of it, it did not have enough money to sink that shaft the distance that it was sank.

Q. That's right.

A. But it could have sank, as I recall it, another 200 feet and mined out and got some more ore from time to time.

Q. They didn't have the money to do what they wanted?

A. Well, to develop in a hurry, no, they did not.

(Testimony of Francis Clayton Keane.)

Q. What was the price of the Big Friday stock just about the time this contract was to be entered into?

Mr. Stocking: I think we'll object to the price of the Big Friday stock; it's not proper cross-examination.

A. I couldn't answer it anyway.

Q. You don't know?

A. I couldn't answer it. I wouldn't have any idea from day [743] to day.

The Court: I have not ruled. That means he's permitted to answer it, and he says he can't answer.

Mr. Etter: I thought I had followed before you had ruled, your Honor, and I didn't want to.

The Court: That settles it; you may proceed.

Q. (By Mr. Etter): After the contract was entered into and it became public knowledge what was going to be done, isn't it true then that the stock of the Big Friday started to climb rapidly on the board?

A. I wouldn't say that that was true. I think that the market as a whole took a jump at about that time, or somewhere in there. Now, as I say, I'm merely talking from a casual thought on it.

Q. Well, whatever the reason may be, I won't ask you that, whatever the reason may be the Big Friday stock at that time did increase considerably in value?

A. I think this deal with the Friday X enhanced the value of the Big Friday stock.

(Testimony of Francis Clayton Keane.)

Q. It enhanced it considerably?

A. I would say definitely it did, yes.

Q. Now, as a matter of fact, after this contract as you say had enhanced the value, isn't it true that three of the people who had been discussing this proposition, Judge Featherstone, Mr. Horning, and John Sekulic, sold a block [744] that they had in the Big Friday totaling 150,000 shares, after the market got up?

A. I have always wanted to know the exact details of that, Mr. Etter. I knew that such a deal was in contemplation, Mr. Allen having handled it, and the understanding between Mr. Allen and myself were that we were to split on the profit to be realized from that transaction. The details of it I've never gotten, and it's the first time, if your figures are right that they put up 50,000 shares apiece there, it's the first knowledge I have or have had as to the amount involved.

Q. Now, this is the Big Friday I'm talking about.

A. That's what I'm talking about too.

Q. You and Mr. Allen didn't have any of that stock?

A. Not any sizeable amount; I think mine was probably gone at the time this play at the market was made.

Q. Mr. Allen didn't have any of that stock?

A. No.

(Testimony of Francis Clayton Keane.)

Q. But these other three men who were in on this, they had it, didn't they?

A. Yes, and they put that stock—in that transaction that stock went to \$1.75, as I recall it.

Q. And what was it, around 20 cents when the contract—

A. Oh, around 20, 30, 40.

Q. It went from somewhere around 20 or 30 cents to \$1.75 after [745] the contract?

A. Yes.

Q. And then these three gentlemen sold this 150,000 shares at that amount?

A. They sold that stock at a price of something a little over a dollar, as I recall it. Now, I have never gotten the details of that from anybody.

Q. Now, do you recall, Mr. Keane, that a contract between the Lucky Friday—do you recall ever seeing the contract, the original contract, between the Lucky Friday and the Lucky Friday Extension?

A. Let me see it and I'll advise you.

Mr. Etter: Well, I'll have it marked here; I was just going to ask you.

(Whereupon, agreement between Lucky Friday and Lucky Friday Extension was marked Defendant's Exhibit N for identification.)

Q. Handing you Defendant's N for identification, I'll ask you if you recognize that? You might look at the last sheet, Mr. Keane.

(Testimony of Francis Clayton Keane.)

A. I acknowledge the signatures of Grismer and Evans here on behalf of the Lucky Friday Extension Company, yes.

Q. Yes.

A. And I recognize Sekulic's signature, I recognize Emacio's signature on behalf of the Friday, and I equally recognize [746] Grismer and Evans on behalf of the Friday Extension.

Q. I see.

A. And it purports to be an agreement entered into on the 30th day of June, 1945, between the Friday, the Big Friday, and the Extension Company.

Q. And I'll ask you if this isn't true, that you had some discussions with Mr. Horning, or rather with Mr. Sekulic, and early in the organization with Mr. Horning, about the type of agreement that would be entered into, having reference to this agreement?

A. Probably I did.

Q. And isn't it true that for some considerable time after the agreement itself was discussed, you had advised Grismer and Evans not to sign it?

A. That is not correct.

Q. That's not correct? A. No.

Q. Do you recall that Allen came up to you and asked you, or told you, that Horning had asked Allen to go and see you about why this contract wasn't signed?

A. No.

Q. You don't recall that? A. No.

Q. And do you recall that you said to Mr. Allen

(Testimony of Francis Clayton Keane.)

"Well, I think I'm entitled to about 50,000 shares of the stock, because [747] I sold my stock out in the Big Friday when it was very cheap, and when they needed money to keep the operation going"?

A. Mr. Allen and I discussed the matter of the Big Friday bonusing us for some of the benefits that the Big Friday was deriving out of that and the Hunter contract.

Q. I see; you talked about "bonusing us" did you say, or did he talk about bonusing you?

A. Bonusing us.

Q. So you didn't say for Allen to go to Horning and see about the 50,000 shares that you thought you were entitled to?

A. At no time did I ever think in the terms of 50,000 shares. We did have a discussion that we felt the Friday should, and the reason that Mr. Allen would be entitled to some of that stock was that he was very active in setting up that entire deal, both on behalf of the Hunter and on behalf of the Friday Extension—

Q. That's right.

A. —and it is true that I gave away stock in the Big Friday in the hopes of getting it—raising money.

Q. Isn't it a fact that either Horning or Horning through Allen told you that he wouldn't give you any stock in the Big Friday?

A. I think he told me that through Allen.

(Testimony of Francis Clayton Keane.)

Q. Allen came back and told you Horning said he wouldn't give [748] you any?

A. Well, now, that wouldn't be what he'd say. He would say under the circumstances that Horning refuses to give us any stock.

Q. You recall that's the way he said it to you?

A. Well, he wouldn't come back to me and say "He refuses to give you any stock" because we were both in it. Whatever one got the other got.

Q. I see; and that was true of Hunter, of course, too, that Mr. Allen was representing?

A. Definitely on the Hunter he was supposed to receive 100,000 shares, and then another 200,000 shares of Hunter which was to be split six ways.

Q. Well, now, isn't it true as a matter of fact that Mr. Sekulic and those people originated the idea of the Lucky Friday Extension, and not you or Mr. Allen?

A. Mr. Sekulic would not have the imagination to originate anything.

Q. But—

A. The deal was originated up at Sekulic's home, and to that part, to that extent, he participated in the origination of the idea.

Q. Well, hadn't you and Mr. Sekulic at a time prior to—now just a minute—at a time prior to this deal you're talking about, hadn't you both, that is, you and Sekulic, gone to [749] the Golconda and got them to put money into the Big Friday?

(Testimony of Francis Clayton Keane.)

A. Oh, definitely I had done that a long time prior thereto.

Q. And didn't Mr. Sekulic?

A. No, not until I finally made a deal with them, but I originated the idea of the Golconda investing in the Friday.

Q. And Mr. Sekulic was with you there?

A. No—he was with me, probably, in connection with negotiations.

Q. Isn't it a fact that Sekulic right now is a director of the Golconda, along with the Big Friday?

A. Yes, recently, and a very small interest in it, practically nil.

Q. And how many shares did you and Mr. Sekulic agree to give the Golconda for investing in the Big Friday?

A. I've forgotten the transaction.

Q. Well, isn't it a fact that you and Sekulic saw to it that Judge Featherstone was given around 100,000 shares?

A. No, I didn't see to it, and the transaction between the Golconda, the Featherstones and the Friday, outside of the fact that I originated it, was handled entirely by Horning. Sekulic did what Horning told him to do, and Horning was the master.

Q. Horning was the master?

A. Horning was the master.

Q. And isn't it a fact that after this first contract was [750] signed, that Allen was—you talked

(Testimony of Francis Clayton Keane.) with Allen about this contract, and he was the man that said that the Big Friday was taking everybody for a cleaning?

A. Now, let me—will you give me that question again, once more, please, until I get sure that I understand it?

The Court: You may read that, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

A. No, I don't believe we ever had such a conversation,—

Q. Well, do you recall Allen—

A. ——save and except as an incident to our attempt to be bonused with Friday stock. Now, we might have had something—we both knew and had discussed that the Friday was getting the lion's share out of that deal. By the same token, equally it was very beneficial to the other two companies.

Q. It was likewise beneficial not only to the Big Friday but to their board of directors, wasn't it, that contract?

A. If the deal had of worked out it probably would have been advantageous to the board of directors.

Q. Yes. Now, isn't it true that as a result of Allen's efforts a supplemental contract was drawn between the Lucky Friday Extension and the Big Friday?

A. I would have to see it to recall the incidents

(Testimony of Francis Clayton Keane.)  
or recall the facts in connection with it. You'd better give me the other one, too, Mr. Etter. [751]

(Whereupon, supplemental agreement between Lucky Friday and Lucky Friday Extension was marked Defendant's Exhibit "O" for identification.)

Mr. Etter: Mr. Keane desires a little time to examine it, so we'll wait until the recess, and I'll continue with some other questions.

Q. (By Mr. Etter): Do you recall that Mr. Allen suggested that that provision of the contract having to do with the retaining by Big Friday of any machinery or equipment bought with money advanced by Lucky Friday Extension be deleted from the contract?

A. Oh, definitely; there was discussion about it, and Mr. Allen was insistent that it go out. I recall that.

Q. Mr. Allen insisted that if Lucky Friday Extension under this original agreement had to pay for the machinery, they should finally acquire title to it?

A. That is correct, yes, that was discussed.

Q. And that's when Mr. Allen entered into this proceeding? A. No.

Q. Well, then, how come, Mr. Keane, that it wasn't in the first contract, if Mr. Allen negotiated that?

A. I can't answer that. Now, as I say, I don't

(Testimony of Francis Clayton Keane.)

wish to be examined with reference to those contracts until I've had an opportunity to read them.

Q. All right. Now, do you recall that within sixty days [752] possibly after the organization of Lucky Friday Extension you gave Allen some 25,000 shares of your attorney's stock? A. No.

Q. Well, do you recall that anybody did give him any of your attorney's stock?

A. Well, as I explained here yesterday, all of that attorney's stock of Friday, all of the attorney's stock was thrown into the common pot.

Q. I see.

A. It's owned by Allen and myself.

Q. I see.

A. Now, on one occasion I do recall there was 300,000 shares of it delivered to Mr. Allen over in Pat's Place by Mrs. Vermillion, or at least that's what she said.

Q. You weren't there?

A. And I think Elmer Johnston was present when that was delivered.

Q. You weren't there, of course?

A. Yes, I said that I was there.

Q. Well, do you recall that sometime prior to the organization of the Lucky Friday Extension you had talked with Mr. Allen about acquiring the Baumgartner stock that was owned by the Delaware, or had been acquired by the Delaware?

A. Mr. Allen—we had discussion. I would want to see the date that that stock was escrowed by Mrs.

(Testimony of Francis Clayton Keane.)

Baumgartner in [753] the Idaho First National Bank before I would specify the date.

Q. Well, I don't mean the date.

A. The negotiations with reference to that were carried on between Mr. Allen and Mrs. Baumgartner.

Q. And then didn't you and Mr. Allen carry on your negotiations about you acquiring it so that you would have an interest in Delaware?

A. No. I had an interest in Delaware prior to that time.

Q. What interest did you have?

A. I had fifty per cent of Mr. Allen's holdings.

Q. You had fifty per cent of Mr. Allen's holdings? A. That is correct.

Q. How did you acquire that?

A. Well, by various dealings, without specifying, he turned over to me fifty per cent of what he owned in it.

The Court: Which company is this?

A. Delaware Company.

Q. And the stock was issued in your name?

A. No. As I told you a little while ago, all of Mr. Allen's stock was left up in this black bag, it was a semi-canvas bag, or some material, it wasn't a leather bag, and it was in my safe, left there.

Q. And what you're telling us now is that you by arrangement or agreement with Allen had a one half undivided interest, [754] so-called, in that stock?

(Testimony of Francis Clayton Keane.)

A. In all of our transactions we were equal partners in everything.

Q. I see. A. That is correct.

Q. When did you make that arrangement?

A. Oh, that was made from time to time as we went along, as specific transactions—

Q. Well, I mean, when did that start, this partnership arrangement where each of you were going to have half of everything?

A. I would judge sometime late in the fall of '43.

Q. Late in the fall of '43? A. Yes.

Q. What you're saying now is that you and Allen entered upon an agreement that thenceforth one half of yours was his, and half of his was yours?

A. That is correct, and from the sale of stock—

Q. Was that of all your worldly goods, Mr. Keane?

A. Just a moment, until I finish answering. I sold—I had various stocks, all of which I sold during that period of time for the purpose of covering overdrafts. I threw everything, all of my Friday and some Yakima-Shoshone, and some other stocks that I had into the common pool.

Q. Now, do you remember in the fall, was it, or sometime in [755] 1947 when Mr. Allen and I think Mr. Grismer—

\* \* \*

(Whereupon, at 12:15 o'clock p.m. the Court took a recess in this cause until 1:45 o'clock p.m.)

(Testimony of Francis Clayton Keane.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

\* \* \*

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

### Cross-Examination of Mr. Keane (Continued)

By Mr. Etter:

Q. Directing your attention, Mr. Keane, as closely as we can, to the early part of 1947, in and about the months of [759] February or March, maybe the latter part of January, do you recall a conversation or discussion had in your office at which you, Mr. McCann, Mrs. Vermillion, Mr. Allen, and Mr. Grismer were present?

A. I don't.

The Court: Who were these, now? The witness; Mr. McCann; Mr. Allen; Mrs. Vermillion; who was the other one?

Q. Mr. Grismer. You cannot recall such a conversation?

A. No. I might recall it if you tell me what the conversation was about.

Q. All right. Do you recall a conversation at

(Testimony of Francis Clayton Keane.)

which those people were present, and possibly one or two who I haven't mentioned, I don't know, where the question of a demand for the resignation of you and Mrs. Vermillion was discussed?

A. No. There was discussions between Allen and I with reference to my resignation, if I was an officer of one of those companies prior to that; that would be in the early fall of '46.

Q. You might have had a discussion about it at that time? A. He and I.

Q. Well, do you recall that at this meeting, at the end of the meeting to which I've referred in the early part of 1947, that you and Mrs. Vermillion and Mr. Evans handed your signed resignations as officers of the Pilot? [760]

A. I don't recall it.

Q. You don't recall that; do you recall that at any time in 1947 you resigned as an officer in the Pilot Silver Mines? A. I might have.

Q. You might have?

A. Yes. I have no independent recollection of it.

(Whereupon, Waiver of notice of meeting was marked Defendant's Exhibit P for identification.)

Q. In hand you Defendant's Exhibit for identification "P", and ask you if you recognize that, Mr. Keane?

A. That's my signature, it's Mrs. Vermillion's signature, and Evans' signature.

(Testimony of Francis Clayton Keane.)

Q. And what is that instrument?

A. It's a waiver of notice of a meeting.

Q. Do you recall signing your name?

A. I do not. I have no independent recollection, but it is my signature.

Q. It is your signature?

A. Definitely so, yes.

(Whereupon, resignation of Keane from Pilot Company was marked Defendant's Exhibit Q for identification.)

Q. Handing you Defendant's Q for identification, I'll ask if you recognize that?

A. I knew that I had resigned, but the date of it, I have no [761] recollection. That is my signature and it is a resignation. Now, whether it was signed that date—

Q. What is the date of that?

A. The 21st day of February, 1947.

Q. Does that refresh your memory at all as to the events that transpired at that time?

A. It does not.

Q. It does not? A. No.

Q. Well, as a matter of fact, isn't this true, Mr. Keane, that Mr. Allen and Mr. Grismer made demand upon you in the presence of the people who I named, to resign as the president, I believe it was, of Pilot Silver Mines?

A. I do not believe that occurred. I might add that I do not recall of ever having had a conversa-

(Testimony of Francis Clayton Keane.)

tion with Allen subsequent to the one that I detailed that occurred down at my residence late in or sometime during the month of November or early in December of '46.

Q. Of '46? A. Yes.

(Whereupon, resignation of Irene Vermillion from Pilot Company was marked Defendant's Exhibit R for identification.)

Q. Handing you Defendant's "R" for identification, I'll ask you if you recognize that? [762]

A. It's Irene Vermillion's signature to a resignation dated the 21st day of February, 1947.

Q. Do you remember the events that transpired on this date when she resigned? A. I do not.

(Whereupon, resignation of Glynn Evans from Pilot Company was marked Defendant's Exhibit S for identification.)

Q. Handing you Defendant's "S" for identification, I'll ask you if you recognize that?

A. I recognize the signature as being that of Glynn D. Evans.

Q. And do you know what it represents?

A. It represents a resignation dated the 21st day of February, 1947.

Q. So you have no independent recollection, then, Mr. Keane, either of the waiver of notice of meeting or of the resignations of yourself, Mrs. Vermillion and Glynn D. Evans, though they all are dated on the 21st day of February, 1947?

(Testimony of Francis Clayton Keane.)

A. I stated that I have no independent recollection of the resignations. I did know, and know now, that we all resigned.

Q. Do you know the circumstances under which you resigned? Were they discussed that evening?

A. Not that I recall. [763]

Q. As a matter of fact, didn't you say at this meeting "Don't do anything for a couple of months, until I can straighten out my books"?

A. No, I did not, not that I can recall.

Q. Not that you recall? A. No.

Q. Would you testify now, Mr. Keane, that you did not say that?

A. I don't believe that I said that.

Q. You don't believe that you said that?

A. That's right.

Q. Well, then, do you recall any circumstances of the reason for your resignation?

A. I do not recall the circumstances. I know that it was determined that we were going to move out of it.

Q. Who determined that?

A. Well, I presume that I did.

Q. You presume that you did?

A. I don't know. I probably had a discussion with McCann with reference to it.

Q. McCann was there, was he not?

A. He was in Wallace at the time.

Q. He was your general law partner?

A. He was my partner.

(Testimony of Francis Clayton Keane.)

Q. He was at the meeting? [764]

A. Well, I don't know that he was at the meeting. I say that I have no recollection of the meeting.

Q. At that time, Mr. Keane, on that date, did you make any claim in the presence of any of these people that Allen was a partner of yours?

A. I certainly cannot answer whether I did or did not if I have no recollection of the meeting.

Q. You have no recollection of the meeting?

A. That's right.

Q. So you haven't any recollection of anything?

A. At that particular time, that's right. Might I have the last question that was propounded to me read again, please?

The Court: You may read it, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

A. The question preceding that, please.

(Whereupon, the reporter read the question as follows: "You have no recollection of the meeting?"")

A. All right; the answer stands.

Q. Now at this time, Mr. Keane, I'm going to hand you Defendant's Exhibit J, and ask you if you remember when those minutes were composed?

A. I couldn't tell you.

Q. Isn't the fact of the matter, Mr. Keane—they bear what date? [765]

A. They bear date June 29, 1943.

(Testimony of Francis Clayton Keane.)

Q. Now as a matter of fact isn't it the truth, Mr. Keane, that these minutes were drawn by you sometime in the year 1947?

A. I would have no way of knowing when they were prepared.

Q. You wouldn't have any way; you have no independent recollection of ever preparing these minutes? A. No, that is correct.

Q. Well, now, these minutes state "The president stated"—and that was you? A. Yes.

Q. "The president stated that the Montana Leasing Company had employed Mr. Arthur Lakes to make an examination of the property under lease from Benton Mining Co. and the Snowstorm group of claims, located in Cascade County, Montana, that said examination had been made and that Mr. Lakes had recommended the prospects incident to said work being carried on by the Montana Leasing Company in the highest terms and had stated that, in his opinion, the continuation of the work would result in the securing of a substantial ore body." June, 1943. Do you have any independent recollection of making that statement to the meeting of the board of directors on that date?

A. No, I do not.

Q. Do you have any independent recollection of making that [766] statement to the board of directors of Independence at any time?

A. I don't know whether I did or not.

Q. But you did sign those minutes?

(Testimony of Francis Clayton Keane.)

A. I signed those minutes.

Q. Isn't it a fact that the first time you ever personally met Mr. Lakes was in the late fall of 1943? A. No.

Q. When did you first meet Mr. Lakes?

A. I've forgotten exactly when. I could go back into some records which I have and probably determine it.

Q. Isn't it a fact, Mr. Keane, that Mr. Lakes never made an examination of the Benton property or the Montana Leasing property or any of the property you mention here, that he never made any examination of that property until the late fall of 1943?

A. I couldn't say; he was over there so frequently he was practically on our payroll steadily.

Q. Yes, but isn't the first time he came over in the fall?

A. I say I have no independent recollection of that; I would have to consult our record, or what record we have. It would mostly be checks.

Q. Do you recall that it was in July of 1944 that Mr. Lakes made an examination of that property?

A. I would have to, as I say, consult checks or look at [767] checks that were paid to Mr. Lakes to find out when and under what circumstances he was first employed by us.

Q. All right; then just assuming that Mr. Lakes

(Testimony of Francis Clayton Keane.)  
went over there in July of 1944 for the first time,  
these minutes would be in error, would they not?

A. Necessarily would have to be, if that were a fact.

Q. Now do you recall, Mr. Keane, when these minutes were composed?

A. I stated that I did not know when they were dictated.

Q. When they were dictated?

A. That's right.

Q. Do you remember when you signed them?

A. No, I do not. They were not dictated and they were not signed on the date they bear. Now, I appreciate that, I know that.

Q. Now isn't it a fact that these minutes were drawn, along with numerous other minutes, were drawn late in 1947 and after you had been subpoenaed to appear before the S.E.C.?

A. I don't believe that I was subpoenaed in 1947.

Q. Well, when were you?

A. It might have been possibly in the fall of '46, or sometime in '46.

Q. Yes, and at that time isn't it true that an investigation was being made by the S.E.C. into the affairs of the Independence? [768]

A. That is correct.

Mr. Stocking: We'll object to that question as immaterial.

The Court: Overruled.

Q. Isn't that so? A. That is correct.

(Testimony of Francis Clayton Keane.)

Q. And pursuant to that investigation didn't you have these minutes drawn and dictated in 1947?

A. I question whether or not I was competent at any time during the year 1947 to draw any minutes or do anything else.

Q. And isn't it the fact that—well, Mr. Keane, was there any time that you can recall between the fall of 1946 and say, June of 1947, when you were competent?

A. Well, it would be at very slight intervals.

The Court: From when, was that date?

A. From the fall of 1946 until June of 1947.

Q. From the fall of 1946 until June of 1947?

A. That would be right, yes.

Q. There were very few intervals?

A. That's right.

Q. You, however, in June of 1947, did you become fairly competent in June of 1947?

A. Not too competent.

Q. Not too competent? [769] A. No.

Q. Well, let's go a little farther; in July of 1947?

A. Probably a little worse.

Q. A little worse, or a little better?

A. A little worse than I had theretofore.

Q. And was this a matter of drinking at that time? A. Absolutely.

Q. It was? A. Yes.

Q. Did you not in June of 1947 cause a complaint to be filed in the District Court of the First Judicial District of the State of Idaho in and for the County

(Testimony of Francis Clayton Keane.)  
of Shoshone, No. 10224, of the official files and records of said court, in which F. C. Keane was the plaintiff and in which J. A. Allen, Montana Leasing Company, a Montana Corporation, Grismer, Lexington Silver Lead Mines, and others were defendants? A. That was filed, yes.

Q. And did you not at that time verify that complaint? A. I did.

Q. And at that time wasn't that in about June of 1947?

A. It possibly was in June of 1947, yes.

Q. And that complaint was a lengthy complaint comprising 17 or 18 pages?

A. I didn't prepare that complaint. [770]

Q. You didn't prepare it?

A. No, and aided to only the slightest extent in the preparation of it.

Q. You didn't have anything to do with it?

A. I knew that it was being done, in a general way.

Q. Did you supply the information that appears in here?

A. Very little of it. I was incompetent at the time.

Q. That complaint was the first allegation you had ever made of a partnership with Allen, isn't it?

A. Absolutely not.

Q. Now—

A. Now let me answer that in full, if I may.

Q. All right.

(Testimony of Francis Clayton Keane.)

A. In June of 1944 I filed in the office of the Collector of Internal Revenue at Helena, Montana, a corporation return for the Montana Leasing Company which return was up to October 5 of 1943, and from that date on a partnership return for Keane and Allen, which was the way it was prepared and was submitted to the Collector sometime in June of '44, after numerous extensions had been given us.

Q. That was an information return you made yourself?

A. I made it on behalf of the Montana Leasing Company, first as a corporation, and after, for the operations after the 5th of October, it was signed as a partnership.

Q. You never showed that to Mr. Allen, did you?

A. Absolutely; Mr. Allen was given copies of them.

Q. I see.

A. And each succeeding year until '46, when I no longer had the records, I made similar returns, or had Mr. Randall make the returns, I should say.

Q. Now, isn't it a fact that you had the records in 1946?

A. I did not. I had some of them. Mr. Allen had the records for the last month's operation.

Q. But you had them up until then?

A. That would be correct.

Q. You turned them over to the commission?

A. That's right.

(Testimony of Francis Clayton Keane.)

Q. Now, isn't it a fact that your purpose in filing that second return you're speaking about was to be able to take the losses on your borrowing from Independence and charge them off against your personal account?

A. I don't follow your question.

Q. Well, was it the purpose?

A. Read that question.

(Whereupon, the reporter read the question commencing with, "Now, isn't it a fact that your purpose.")

A. That's not right.

Q. That wasn't the purpose? A. No.

Q. Now, this information that appears in this lawsuit you [772] filed, you say that you didn't—did you get that information together?

A. I said I did not.

Q. Who did get it together?

A. Mr. Langroise, he's an attorney at Boise, Idaho; Mrs. Vermillion, and Mr. McCann. Mr. Sullivan dug it out.

Q. Now, isn't it true that sometime prior to the time this lawsuit was filed that you and Mr. Langroise both requested Allen to go into a partnership arrangement with you on these things?

A. No.

Q. Were you ever present— A. No.

Q. —do you recall that you were present when Mr. Langroise stated to you and to Mr. Allen that he could beat this thing if it was a partnership?

(Testimony of Francis Clayton Keane.)

A. Beat what thing?

Q. Beat this investigation that was coming to you, with the Commission? A. On what?

Q. Well, did he say that?

A. No. The investigation had been completed at that time, of the Independence.

Q. Had you said anything during the investigation and up until the time that you executed this note, that Mr. Allen [773] was a partner of yours?

A. Had I what?

Q. Had you told any person?

A. Oh, it was common knowledge. I was introduced a hundred times by Mr. Allen as his partner.

Q. Now, isn't it a fact that this partnership affair you're claiming now is for the purpose of covering up the signing of Allen's name on this document?

A. Let me see that for just a second again, will you? I want the date of it. As I stated a moment ago, in June, the 14th, I think it is, I filed an income tax with the Collector. I've got a copy, together with a copy of the letter that accompanied it, if you wish to see it, in which I stated that the corporation had ceased doing business on October 5, 1943, and then we equally made and filed, or I had made and filed, an income tax return of the partnership affairs from and after that date, and the change from the corporation to the partnership was at Mr. Randall's suggestion, for tax purposes.

Q. Now we'll go back: Do you recall that when

(Testimony of Francis Clayton Keane.)

you and Mr. Randall were in the city of Spokane in the early part of February to testify before the Securities and Exchange Commission, that you called Mrs. Randall from your hotel room? Do you recall that?

A. I don't recall having called Mrs. Randall.

Q. Do you recall that Mrs. Randall called you and talked with you? A. No, I do not.

Q. You don't recall that?

A. I wouldn't recall it. She might have.

Q. Do you recall whether or not Mrs. Randall told you that Mr. Randall had just testified, and that he was under obligation to keep his testimony secret? A. No, I don't recall that.

Q. You don't recall that? A. No.

Q. I think during your direct testimony, Mr. Keane, you stated that there was some arrangement to divide up Hunter Creek stock at the time of the negotiation of Lucky Friday Extension, Big Friday, and Hunter Creek; I think you stated that it was to be divided up six ways?

A. That's right.

Q. Will you tell us what that arrangement was, that six ways that you discussed?

A. Mr. Allen was to receive one-sixth, I was to have one-sixth; the remaining two-thirds were to be divided among the four other directors of the Big Friday.

Q. And name those four directors.

A. I think it was Emacio at that time, Horning,

(Testimony of Francis Clayton Keane.)

Sekulic, and Featherstone, Judge Featherstone.

Q. Now, during the course of your examination, direct examination, Mr. Keane, yesterday, you identified a great number of exhibits? A. Yes.

Q. Is that correct? A. Yes.

Q. Possibly 30 or 35, or more?

A. Might have, yes; I don't know.

Q. And you identified those exhibits, and do you recall as a matter of independent recollection the fact that those exhibits were all known to you?

A. I don't follow you.

Q. At the time of their execution, if they were checks or other documents—

A. I'm not following the question, please. Read it, will you please, Mr. Reporter?

(Whereupon, the reporter read the question commencing "And you identified those exhibits")

A. No.

Q. You don't? A. No.

Q. How is it that you were able to identify them?

A. They were records in my office.

Q. They were records in your office.

A. Yes. [776]

Q. But you don't have any independent recollection of any of them?

A. Oh, some of them necessarily, yes.

Q. But not all of them you identified?

A. No.

(Testimony of Francis Clayton Keane.)

Q. You merely identified them because you were told that they were from your office?

A. I wasn't told they were from my office. They were matters that I recognized and had seen prior to the time that I personally delivered them to Mr. Denney.

Q. I see. In your direct examination you stated the other day that in organization of the Lucky Friday Extension you discussed with Allen the capital stock and the price and the price of each share, who the officers of the company would be after it was incorporated?

A. That is correct.

Q. When did you discuss that with Allen?

A. Prior to the time it was incorporated.

Q. You have an independent recollection of that discussion? A. I think that I do, yes.

The Court: What corporation is this?

Q. Lucky Friday Extension. You have an independent recollection?

A. I would say that I have, yes.

Q. And the question was asked of you as to the Lucky Friday [777] prospectus, and it indicated that 500,000 shares were to be taken as attorneys' stock for Elmer Johnston and F. C. Keane, and that 1,229,700 shares had been issued for mining claims and real estate to Mr. Grismer, and you stated that Mr. Allen and you made those arrangements?

A. Mr. Allen actually made the arrangements with Mr. Grismer.

(Testimony of Francis Clayton Keane.)

Q. You have an independent recollection of that?

A. I know that he did, yes.

Q. I see.

A. At least he told me that he did, and it was understood all of the time between us. We had discussed it, that if there was any handling of Joe to be done, Allen was going to do it.

Q. You have an independent recollection of that?

A. Oh, it was discussed with us many times.

Q. Many times? A. Yes.

Q. You also stated that of the 1,229,700 shares Mr. Grismer was to receive 100,000 shares, and the balance belonged to you and Allen, subject to certain commitments? A. That is correct.

Q. Do you have an independent recollection of taking with Mr. Allen about that?

A. Oh, definitely, yes, it was discussed.

Q. And you likewise have an independent recollection of you [778] and Mr. Allen discussing with Mrs. Vermillion the matter of signing checks in both of your respective names—or in your name, rather? A. I think that's correct.

Q. And you have an independent recollection that you and Mr. Allen both instructed her on that account? A. That's right.

Q. In the money or any of the funds that you received, Mr. Keane, from the sale of your attorney's stock, did you ever give Allen a check for any particular portion of it?

A. I didn't sell any of my attorney's stock.

(Testimony of Francis Clayton Keane.)

Q. Well, did you receive any funds for it?

A. Well, there were some funds turned back into the Montana Leasing Company, that's right, yes.

Q. But did you ever give Mr. Allen any portion of the funds? Did you write out a check to James Allen and tell him that "Here's half of it?"

A. I might explain to you, there was Emacio and McFee and one or two others originally agreed to put in five hundred or a thousand dollars apiece into the Friday. Now, I think that money aggregated two thousand dollars. In addition to that, there was \$2,000 worth of stock went to Moscow, Idaho; it went to Courter, Clyde Marsh, and Howard Short. The proceeds from that \$5,000 was turned over to me and deposited either in my personal account or in the Montana [779] Leasing Company account. Now, if they were transferred in my own account, deposited to my own account, they were later transferred.

Q. That's right, but did you ever give Mr. Allen any money personally?

A. Mr. Allen was away ahead all the time, Mr. Etter.

Q. I would like you to answer the question, Mr. Keane. Did you ever give Mr. Allen—

A. Well, definitely, I didn't, no. He had the money; I didn't.

Q. Now, do you have an independent recollection of the first meeting in Pat's Cafe, or whatever it

(Testimony of Francis Clayton Keane.)

was, when the matter of incorporating or organizing the Lucky Friday Extension—

A. I don't believe that it was held there at all. I don't believe that Joe Grismer was ever present when I was present and the matter was discussed. I think Mr. Allen and Mr. Grismer did discuss it in my absence.

Q. You never discussed it with anyone in Pat's Cafe?

A. It's possible. I've been in Pat's Cafe a few times, not very often.

Q. But you have no recollection of that particular instance?

A. If you would say it was the Metals Club, I probably discussed it with a lot of people there.

Q. All right, do you recall a discussion in the Metals Club with regard to the organization of the Lucky Friday [780] Extension?

A. I do not. I think the discussion with reference to that organization was had by Mr. Allen and myself upstairs in his room.

Q. You don't remember any meeting in Pat's Cafe or in the Metals Club?

A. We had numerous meetings, if they could be called meetings, in the Metals Club.

Q. Yes, but do you remember discussing this matter in the Metals Club with Allen and Horning and Sekulic and Mr. Ted Halin and other people?

A. It might have been discussed there, yes.

Q. You don't have a recollection of it?

(Testimony of Francis Clayton Keane.)

A. Oh, just as a person would remember that you had eaten a week ago, or two weeks ago, but what you ate you wouldn't recall. It was a common occurrence for us to stand around and talk mining problems and so forth daily.

Q. Now, you stated in your testimony that you don't recall that you ever met Mrs. Phelan?

A. I didn't so testify, Mr. Etter. I said that I met her on one occasion.

Q. Oh, once, yes. A. That's right.

Q. That was when you gave her a check?

A. I don't believe—I wouldn't say for certain; it's quite [781] probable that Mrs. Vermillion wrote that check.

Q. I see. On your account?

A. On my account, yes.

Q. Do you remember that incident?

A. I remember of meeting her, yes.

Q. Do you remember the check being written for her?

A. I would have to see the check to determine whether I signed it. I knew the check was going to be delivered to her, but who wrote it, whether Mrs. Vermillion wrote it or I did, I couldn't answer.

Q. Now, do you remember meeting a gentleman by the name of Mr. Herrick?

A. Doc Herrick? Oh, I've known him all my life, that is, all the time I've been in Wallace.

Q. Did you have any discussion with Herrick about the acquisition of the Cincinnati group?

(Testimony of Francis Clayton Keane.)

A. Not until I was advised by Mr. Allen to give him a check for \$5,000.

Q. And that's what you did?

A. That's what I did. That's the first time I discussed it with Mr. Herrick.

Q. And you recall that very well?

A. Well, I recall that I paid him \$5,000, yes.

Q. Referring back, Mr. Keane, to Plaintiff's Exhibit 39, do you recall a discussion in Mr. Horning's office that was [782] attended by you and Mr. Allen and Mr.—you and Mr. Horning and Mr. Allen, do you recall any discussion a day or so prior to the execution of this agreement to which this check is attached?

A. We might have had a conversation with reference to Mr. Horning's employment for the purpose of preparing contracts incident or as between the various parties that were interested in that.

Q. And Mr. Horning was employed, was he not, for that purpose?

A. He was employed for that purpose, at my suggestion.

Q. And of necessity there was required a \$25,000 check, isn't that right? A. That is right.

Q. And do you recall whether or not Mr. Allen gave Mr. Horning his personal check for \$25,000?

A. That's hearsay—no, it is not—Mr. Allen advised me that he had given him a check for \$25,000, and complimented Mr. Horning on the fact, or spoke highly of Mr. Horning, for the reason that

(Testimony of Francis Clayton Keane.)

Mr. Horning says, "Allen's given me that money, and I've got it."

Q. And do you recall at that time Mr. Horning said, "Well, if he hasn't got it I'll go around the corner and get it myself to put up on this deal?"

A. Well, I think that's right. [783]

Q. And isn't it a fact you said, "There's no necessity for that; I can get the money, too"?

A. No, absolutely not.

Q. You didn't say that? A. No.

Q. And do you recall that you went down to the bank and came back up to Mr. Horning's office with a deposit slip?

A. I didn't; I came back to the Metals Club with a deposit slip.

Q. All right, when you came back with the slip wasn't Mr. Allen and Mr. Horning together?

A. They were.

Q. Didn't you show the slip to Mr. Horning?

A. I turned it over to Mr. Allen, and he said he wasn't satisfied with it, he wanted a cashier's check.

Q. Was it Mr. Horning or Mr. Allen that wasn't satisfied? A. Allen.

Q. Is it true Mr. Horning took his pen and scratched out these two words "certified check"?

A. Not in my presence.

Q. Mr. Horning didn't say that or do that?

A. That was not done in my presence, or at least I have no recollection of it if it was.

(Testimony of Francis Clayton Keane.)

Q. Do you recall testifying yesterday, Mr. Keane, that you paid ten thousand dollars and some odd cents, I think it [784] was, to Mr. Horning for legal services in connection with some litigation of the Independence, which you got out of Pilot?

A. That is correct.

Q. That is correct; now, what was your physical condition at that time?

A. It wasn't too good, but it wasn't as bad as it got later.

Q. It wasn't as bad as it got later. Now, Mr. McCann at that time was your general law partner, was he not?

A. I think he returned from the Army sometime in the—

Q. April, was it not?

A. —the spring of '46.

Q. Sometime in April, probably?

A. I wouldn't fix the month.

Q. And it was about in June, was it not, that you took this \$10,000 from Pilot and paid it to Mr. Horning and Mr. McCann?

A. Mr. McCann did not share in that.

Q. Was he employed at that time?

A. If he did, if he was, he received no compensation.

Q. What was done, then, with that \$10,000?

A. I imagine if Mr. Horning hasn't spent it he still has it.

Q. He still has it?

(Testimony of Francis Clayton Keane.)

A. Well, he may have spent it. It was his money. There was no kick-back to anybody on it. [785]

Q. But it was paid to Mr. Horning, was it?

A. That's right.

Q. And was any of it paid to Mr. McCann?

A. Not that I ever heard of.

Q. I see.

A. I don't believe Mr. McCann received any money for his services incident to that.

Q. The Independence Lead Mines Company, however, had authorized the payment of the \$10,000 to both Mr. McCann and Mr. Horning, had they not?

A. Not that I remember of.

Q. Now, at that time that you paid the \$10,000 to Mr. Horning, that was in settlement of some litigation in which the Independence was involved?

A. That was in settlement of his fee for services rendered in connection with the settlement, yes.

Q. With the settlement? A. That's right.

Q. And did you tell Mr. Horning where you were getting that money? A. No.

Q. Did Mr. McCann know where you were getting it?

A. Mr. McCann had nothing whatever to do with—

Q. No, I'm just asking you, he wouldn't know where you got it? [786]

A. How would he know?

Q. Did you tell him?

(Testimony of Francis Clayton Keane.)

A. There was no necessity to tell him. I don't recall that I did.

Q. Was Mr. Allen there at the time?

A. Mr. Allen knew of it.

Q. How did he know it?

A. We had discussed it before.

Q. Where did you discuss it?

A. I couldn't fix the time nor the place. A lot of our conversations were carried on in his room.

Q. I see.

A. Some more of them were carried on at the bar.

Q. But you have an independent recollection of such a conversation? A. Yes.

Q. Now, was there any other money that you paid to Independence that you took from Pilot at that time?

A. Not that I—there might have been; I don't know; I'd have to see the records on it.

Q. I see. Is there any way, Mr. Keane, that you have of telling us, any standard that you know of, by which you know now that at certain particular times you were all right to do business, and at other times you weren't? Can you tell us now how you happened to know, or knew? [787]

A. Well, if I didn't remember what had occurred, the next morning, I figured I was not in shape.

Q. But all these things that you've testified to as a witness for the government, you remember all those?

(Testimony of Francis Clayton Keane.)

A. If they weren't qualified I do remember them, and remembered them.

Q. But your statement is correct on numerous questions I've asked, that you don't remember?

A. Well, if I don't remember I've told you that I don't recall.

Q. Do you recall being personally present in this courtroom on December 8 of 1948?

A. I imagine I was in here, yes.

Q. Present at that time with your counsel?

A. Yes, I think that I was, if that's the correct date; I'm assuming it is, Mr. Etter, the date that I plead nolo contendere.

Q. Yes. A. Yes, I was present.

Q. And do you recall that during that hearing it was stated in part by one of your counsel: "In the second place, his counsel believe from information which they think is reliable, that the physical condition of Mr. Keane at the time of the commission of the alleged offense was such as to raise some doubt in the mind of counsel as to whether [788] or not he was in a physical and mental condition where he could entertain the necessary intent, which is an element of the offense here charged, and for the further reason that his physical condition was such as to make it impossible for him to resist certain demands and suggestions made by others who we believe controlled his actions"?

A. I heard that statement made, yes.

Q. And do you recall that this statement was

(Testimony of Francis Clayton Keane.)

likewise made: "I would like just to very briefly touch upon the physical condition of the defendant Keane, coming along in the early part of 1940. He was not attending to his practice of law. He was during that period using liquor excessively, and in various times which I saw him throughout that period, I found him not able to intelligently and in some instances to at all discuss any matter with any degree of continuity or reason. This condition continued along on and on until in the end of—or even into 1947."

A. I believe I heard that statement made, yes.

Q. And did you hear the statement made: "Keane was continuing his drinking and was in substantially the same condition which I have described; he had no way of being able to do anything".

A. That might have been made; I don't particularly recall that.

Q. And do you remember that he said in part: "We were able to [789] get Mr. Keane in the condition where we could talk to him, we found these facts, and Keane immediately then started to pursue a course of trying to secure for the benefit of these companies and the creditors of this partnership any assets which the partnership had."

A. I heard that statement made, yes.

Q. And you say that that statement you think is a true statement, Mr. Keane?

A. It might have been embellished somewhat.

Q. It might have been embellished somewhat?

(Testimony of Francis Clayton Keane.)

A. Yes.

Q. Do you know what the purpose of the embellishment was at that time?

Mr. Stocking: We'll object to that.

The Court: How is that proper here, what someone else said?

Mr. Emigh: Bearing out the credibility of the witness.

Mr. Etter: It's a matter of credibility and motive both.

The Court: I don't think that on the stand in this case this witness is bound by what someone else says in the courtroom.

Mr. Etter: Your Honor, it was his counsel, and he was personally present. [790]

The Court: I recognize that, but if every person who had a lawyer was bound by not only what he said, but what his lawyer said, the ordinary individual would be in a terrible predicament.

Mr. Emigh: I believe that's in the nature of a stipulation to the Court, and the Court acted upon it. In my opinion that statement was a stipulation of counsel to the Court for the benefit of the defendant, and was as binding as any other stipulation made to the Court.

The Court: Assuming that he was bound by it, the purpose of this examination is to test his truthfulness, and his truthfulness can't be tested by what someone else said. This all occurred long after the transaction involved and the conspiracy

(Testimony of Francis Clayton Keane.) existed. It ended on the filing of the indictment, and this appearance in court was after the indictment was filed. It was not a statement by him. If this witness himself made any statement relative to these matters in open court or otherwise contradictory to what he says today, I'll permit it to be shown, but it's a new principle introduced here that this witness can be impeached by what an attorney says, and I'm casting no reflection on an attorney. I mean by that, the ordinary client doesn't usually interrupt his attorney if he thinks his attorney is helpful to him, and I'm satisfied, counsel, that there will come a time in your practice that you'd hate to have some client of yours bound by some statement that had been made by an attorney he had. If I'm mistaken I'd be very happy to have some cases upon this proposition, but to my mind it's so novel you'll find no cases supporting the principle you suggest.

Mr. Etter: Well, I won't make a statement.

The Court: I'll sustain the objection.

Mr. Emigh: Exception, your Honor.

The Court: Allowed.

Mr. Etter: That's all, Mr. Keane.

#### Redirect Examination

By Mr. Stocking:

Q. Mr. Keane, as a defendant in this case you have not yet been sentenced by the Court?

A. That's correct.

Q. You have no idea at this time what your sentence might be? A. None whatever.

(Testimony of Francis Clayton Keane.)

Q. Has that ever been discussed with anybody representing the government, as to what your sentence might be?

A. I think that the only person you could discuss it with would be the Court.

Q. And you have never discussed it with the Court?

A. No, most certainly I haven't discussed it with the Court.

Q. Have your attorneys ever discussed it with the Court? A. Not to my knowledge.

Q. What was your condition of your health during the early [792] part of 1947, when you stated you had difficulty in recalling certain transactions?

The Court: Say, just a moment. For the better clarification of the jury I would appreciate, unless counsel, either counsel, have objection, a statement being made as to the identity of the Judge to whom he pleaded, and the identity of the Judge or Court whom he expects will sentence him.

Mr. Stocking: Have the witness make that?

The Court: Yes; I'd be glad to have you do it. Is there any objection?

Mr. Etter: No objection.

Q.(By Mr. Stocking): What Court did you appear before?

A. I plead nolo contendere in front of Judge Driver, and I was present in the courtroom when at the suggestion of the district attorney he retained jurisdiction of the sentencing of myself and Grismer.

(Testimony of Francis Clayton Keane.)

Q. And postponed the sentencing?

A. And postponed the sentence until after the Allen trial.

Q. Now, going back to another question with respect to your statements about your recollection in 1947, what was the condition of your health during the early part of 1947?

A. Well, my nerves were in terrible condition, and I was undernourished, I wasn't eating regularly, I was depending upon whiskey as nourishment, and late in the fall I [793] discovered that it had affected my heart, sclerosis of the liver, and high blood pressure, all of which I am still suffering from.

Q. Did you then place yourself under the care of a physician?

A. Well, I've been under the care of the Virginia Clinic since October or November of 1947, and still am under their care.

Q. You did appear—

A. That hospital is in Seattle.

Q. Yes. You did appear before the representatives of the Securities and Exchange Commission about March of 1947, did you not?

A. I probably did. I've got a hazy recollection of coming in here one time.

Q. And that was in connection with an investigation of the Independence Company—

A. That is right.

Q. —and its failure to file an annual report as required by law? A. That's right.

(Testimony of Francis Clayton Keane.)

Q. And the report was in the process of being prepared, or had just been prepared by Mr. Randall about that time, is that correct?

A. Shortly before it, I imagine. I wouldn't attempt to fix any dates. [794]

Q. Have you had a chance to refresh your recollection as to whether or not you ever made any statement that Mr. Allen's name or signature appeared on the partnership note which was exhibited here?

A. I was shown a transcript of the testimony that I gave at that time, during the recess period. It did not appear in there that I had made any statement that that was Mr. Allen's signature.

Q. What is your best recollection as to the statements you made to representatives of the Securities and Exchange Commission?

A. If the question were asked me, I would have answered that I signed Allen's name.

Q. Now, what was the purpose of filing the partnership return—

Mr. Etter: Your Honor, at this time, I think, the witness has just testified, and I didn't want to interrupt, that we have a right to examine the instrument to determine just exactly the whole scope of the examination. They say they've refreshed his recollection with a transcript of the testimony. I think we're entitled to see it.

Mr. Stocking: I don't think they have that right, your Honor; it's a confidential document be-

(Testimony of Francis Clayton Keane.)  
tween the witness and the Securities and Exchange  
Commission.

Mr. Etter: Well, now, it hasn't been confidential so far as the testimony sought to be introduced by the [795] government as a matter of rebuttal.

The Court: That's correct. Counsel, I have some suggestion. We're nearing a recess. It may be that whatever confidential character attached to that testimony has been somewhat dissipated.

Mr. Stocking: Well, he indicated, though, that they wanted access to the whole record.

Mr. Emigh: Whatever he had referred to to refresh his memory.

Mr. Stocking: If he referred to a page of testimony—

The Court: Well, just a moment. I have a suggestion . Counsel suggested in cross-examination of this witness that he testified before the Securities and Exchange Commission that a certain signature was written by Mr. Allen. This witness has contended that it was not written by Mr. Allen, that he wrote both signatures because they were partners, and he contended that if the question were asked him, that he told the truth to the Securities and Exchange Commission to the effect that he had written the signature. Now, if the defendant has the right to look at that testimony, the defendant has a right to search it with respect to that particular item. They can't use that as an excuse for a lot of other inquiries, but I am much inclined to think

(Testimony of Francis Clayton Keane.)

that a system can be devised by which the defense will have the benefit of [796] knowing what his testimony was on that point.

Mr. Stocking: Well, probably we can come to some decision about it, then, during the recess period.

The Court: All right. I tried to suggest that it could go over until recess. You may proceed.

Mr. Stocking: I asked another question there when counsel interposed this statement.

(Whereupon, the reporter read the last previous question.)

A. Now, what was the purpose of filing the partnership return?

Q. What was the purpose of filing the partnership return in Montana Leasing Company and dissolving the corporation?

A. Well, the purpose as it was explained to me was for purposes of taxation.

Q. Now, with whom did you discuss that purpose? A. Mr. Randall and Mr. Allen.

Q. And did you get Mr. Randall's conclusions from an accountant's standpoint? A. Yes.

Q. And he's experienced in tax matters; you relied on him?

A. Well, he's a certified public accountant.

(Whereupon, tax return of Keane and Allen, 1943, was marked Plaintiff's Exhibit No. 93 for identification.)

(Testimony of Francis Clayton Keane.)

(Whereupon, tax return of Montana Leasing Company was marked Plaintiff's Exhibit No. 94 for identification.) [797]

Q. Referring to Plaintiff's 94 for identification, can you identify that, please?

A. That's the final return for the Montana Leasing Company for the calendar year 1943, which was filed with the Collector of Internal Revenue at Helena, Montana.

Q. As what, a corporation, or partnership?

A. As a corporation, and it encloses a letter which shows the—states those facts.

Q. What is the date of that letter?

A. That letter is dated May 13, 1944.

Q. And identify Plaintiff's 93 for identification, please.

A. That's a partnership return of the partnership consisting of Keane and Allen for the year ending December 31, 1943. It doesn't show at which date it started in 1943.

Q. Who prepared these returns?

A. Mr. Randall prepared both of them.

Q. Did Mr. Allen receive copies of these returns?

A. They were made for him, and they're not in the file. I would judge that he had. We did discuss——

Q. This matter was discussed?

A. Between us, yes.

Q. And this is the letter that you had reference to in cross-examination? A. That's correct.

(Testimony of Francis Clayton Keane.)

Q. And these are the returns that you mentioned? [798]

A. That is correct; these are copies of them.

Q. Yes. These were made at what time, these copies?

A. They were made sometime May or June of 1944. We had gotten extensions.

Q. These copies and the copy of the letter which appears in Exhibit 94, were they all made at the same time that the originals were made?

A. Simultaneously, yes.

Mr. Stocking: We'll offer in evidence 93 and 94 for identification.

Mr. Etter: A few questions on voir dire?

The Court: Surely.

#### Voir Dire Examination

By Mr. Etter:

Q. Mr. Keane, were you ever present with Mr. Allen when you showed him these returns?

A. I don't know whether I was or whether I was not, I mean that I showed him; we had discussed the matter of those returns.

Q. You don't know whether he ever saw these or not?

A. Well, they were—they must have been delivered to him. The contents of them were discussed with him.

Q. Did you personally mail any of these to him?

A. Personally I did not, no. I would imagine they were delivered to him personally.

(Testimony of Francis Clayton Keane.)

Q. But you don't know. [799]

A. No, I have no independent recollection.

Q. He didn't sign either of them?

A. He signed neither.

Mr. Etter: I think I'll object at this time on the ground no proper foundation has been laid, they're incompetent, irrelevant and immaterial to prove any issue as made against the defendant Allen, and furthermore on the basis of the fact that it appears on the face of the exhibit 93 that the exhibit does not support nor prove any testimony so far adduced by the witness Keane to the effect that the defendants Keane and Allen were operating a partnership under the name of the Montana Leasing Company.

The Court: All right, let me see the two exhibits. Well, it would seem to me that exhibit 93 for identification is admissible. It would not have been admissible except that cross-examination not only suggested but insisted that the first time he had ever claimed to anyone that he and Mr. Allen were partners in anything was by a complaint in 1947. By virtue of that I think that exhibit 93 is admissible for what if anything it is worth.

Mr. Etter: I'd like to add on the objection that the exhibits are, so far as the foundation has been laid by the witness Keane, pure hearsay as far as the defendant Allen is concerned.

The Court: I recognize that, and if it's admitted [800] it's only admitted for the purpose of

(Testimony of Francis Clayton Keane.) showing that as early as 1944 Mr. Keane at least was contending that there was a partnership between the two of them, and I will overrule the objection as to 93, and admit it.

Mr. Emigh: Exception.

The Court: As to 94, it would seem to me the objection is well taken. Exhibit 93 admitted; objection overruled.

Mr. Etter: Exception.

The Court: Exhibit 94 rejected; objection sustained.

(Whereupon, Plaintiff's Exhibit No. 93 for identification was admitted in evidence.)

(Whereupon, Plaintiff's Exhibit No. 94 for identification was rejected.)

#### Redirect Examination (Continued)

By Mr. Stocking:

Q. Mr. Keane, by the summer of 1945, when the Extension Company was organized, what were the—

The Court: Just a moment. The jury will understand that Exhibit 93 is not admitted for the purpose of establishing whether there was or was not a partnership between Mr. Keane and Mr. Allen. It is only admitted for what aid if any it may be to the jury in determining whether 1947 was or was not the first time that Mr. Keane con-

(Testimony of Francis Clayton Keane.)

tended that he and Mr. Allen were partners. The jury will understand that the contention by Mr. Keane that he and Mr. Allen were [801] partners does not make it so. This Exhibit 93 is admitted only for the limited purpose of assisting the jury in determining how much or how little credibility should be given to Mr. Keane, particularly with respect to the first time he claimed there was a partnership.

Q. (By Mr. Stocking): Mr. Keane, by the summer of 1945 when the Extension Company was formed, what were the possibilities of the Montana Leasing borrowing more money from Independence?

A. Not very good.

Q. And for what reason?

A. It was out of money, or out of property.

Q. Independence was? A. That's right.

Mr. Stocking: I have no further questions. Now, with regard to the exhibit——

The Court: Just a moment; have you finished your cross-examination?

Mr. Etter: I wanted the Court's permission to ask one question on direct, and one question on cross, and that's all.

The Court: Direct in your case?

Mr. Etter: No; for one question, I should say.

The Court: You were on voir dire.

Mr. Etter: Yes. [802]

The Court: And I wasn't sure whether that had been finished.

(Testimony of Francis Clayton Keane.)

Mr. Etter: Yes, that's finished, your Honor.

The Court: And you're back on redirect again.

Mr. Stocking: There were some exhibits that I didn't get around to re-offering yesterday, and I think at least two of them were re-identified by this witness; I think the others are now supported by additional testimony. Exhibits 42 and 43 are offered, being the bank signature cards, one for Delaware Mines, one for Lexington Silver Mines.

The Court: For the information of counsel I'd expect to take a recess at quarter after three. We have ten minutes to go. If after you're through with this you need to accelerate that a bit, I would consider acceleration.

Mr. Etter: I have no objection to these, to accelerate this, your Honor.

The Court: Exhibits 42 and 43 admitted, no objection.

(Whereupon, Plaintiff's Exhibits No. 42 and 43 for identification were admitted in evidence.)

Mr. Stocking: We'll re-offer Exhibit 44, the Callahan Consolidated deposit slip dated August 7, 1945, identified by the witness Beatrice McLean French. This [803] witness has further identified the \$6,000 Delaware Mines—the signatures on the Delaware Mines check which was written on that date.

Mr. Etter: To which we object on the ground there's no proper foundation laid to connect the

(Testimony of Francis Clayton Keane.)

defendant Allen with that exhibit by the testimony of either this witness or the witness McLean; the same will lead the jury to conjecture and speculation; pure hearsay as to the defendant Allen; it's immaterial, incompetent and irrelevant.

The Court: Objection overruled; Exhibit 44 admitted.

(Whereupon, Plaintiff's Exhibit No. 44 for identification was admitted in evidence.)

Mr. Stocking: The Court had reserved ruling on Plaintiff's Exhibit 48 which had been identified by Miss Nolting, from E. J. Gibson and Company, and were the checks written in the Beatrice McLean account. Some of the checks have been identified as bearing Mr. Allen's endorsement.

Mr. Etter: Yes. We desire to make the same objection that I just made to the other, and I wish to add to it the same objection that I made at the time of the offer of this exhibit, that is, on the face of each and every one of these separate items that appear in the exhibit are dates starting with the end of January, 1947, [804] extending as far as September 28, 1947, for and on the reason and on the ground that on the testimony of the witness himself he considered that there was no agreement or otherwise, assuming that there ever was, which we deny, between he and Allen after I think it was the fall or the early fall of 1946, and based further upon the ground and testimony adduced with re-

(Testimony of Francis Clayton Keane.)  
spect to this witness and the defendant Grismer, which is clearly apparent, that no conspiracy then could exist so far as the defendant Grismer was concerned.

Mr. Stocking: If the Court please, these checks are connected with the stock certificates which the defendant Grismer testified were issued as original promotion stock, and Beatrice McLean French's testimony was that she had opened no account at Gibson's; the account was handled, she testified, by Mr. Allen.

Mr. Etter: I want to add furthermore, I'm not prepared to argue this, but it's been suggested to me that it's within the exempted transaction, having been made over a year after the original offering, and not claimed that it's any treasury stock.

Mr. Stocking: It's offered not for the purpose of showing any violation of the registration provisions, but for the purpose of connecting the defendant Allen with the proceeds of the sale of promotion stock. [805]

The Court: Well, as to five of these checks I'm pretty well satisfied as to what my ruling should be, but as to this check to cash, I'm not at all satisfied.

Mr. Stocking: Yes, the account was in evidence and identified as being one account.

The Court: Let me see the account.

Mr. Stocking: The stock certificates which have

(Testimony of Francis Clayton Keane.) already been admitted in evidence, which support the account, support the checks.

The Court: Well, which support this "cash" check?

Mr. Stocking: This is the account, if the Court please, and the first check is a cash item. I believe that has also been admitted.

The Court: The objection is overruled.

Mr. Etter: Exception.

The Court: Exhibit 48 admitted.

(Whereupon, Plaintiff's Exhibit No. 48 for identification was admitted in evidence.)

(Reporter's Note: This exhibit was previously admitted as shown on page 496 of this printed transcript.)

Mr. Stocking: Now, with respect to Exhibit 49, which is a copy of a letter to Mr. Allen identified by Beatrice McLean French, the Court reserved its ruling because attached to the letter was a registry return receipt, and the signature on it had not been identified. [806] I would like at this time to have the return receipt identified as Exhibit 49-a, and make an offer of the letter itself as Exhibit 49. This was also in connection with these same transactions, the mailing of these particular stock certificates to Mr. Allen in connection with the sales account.

The Court: What do you wish me to do?

Mr. Stocking: I'm renewing my offer as to Exhibit 49.

(Testimony of Francis Clayton Keane.)

The Court: There's no change.

Mr. Stocking: Well, you reserved your ruling until the—

The Court: I reserved ruling, and there's been no change, nothing has been done.

Mr. Stocking: Well, I could detach the Exhibit 49-a from 49, and offer only 49; that's my thought.

The Court: Well, assume it's detached, what difference does it make?

Mr. Stocking: As I understood the Court, the reason you didn't admit this was because of the fact Exhibit 49-a, as I call it now, had not been sufficiently identified. No question was raised as to the letter.

The Court: Exhibit 49 consisting of the part that is a return receipt is in the same position. Nobody has told me anything about the signature. The card was, until [807] you got it loose, a part of Exhibit 49. Tack it back, Mr. Clerk.

Mr. Stocking: Our position is this, that this is a part of the same transaction, and has been identified by the witness Beatrice McLean French as a copy of the letter, duplicate original of the letter which was mailed to the defendant Allen with those particular stock certificates which were run through an account in her name.

The Court: Well, I've reserved ruling until something was done. Since you don't wish to do it I'll reject Exhibit 49. Exhibit 49 is rejected. Objection sustained.

(Testimony of Francis Clayton Keane.)

\* \* \*

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.)

The Court: Counsel, I'm interested in the testimony of Mr. Keane before the Securities and Exchange Commission I take it in the early part of 1947, about March. The redirect examination by Mr. Stocking I think properly makes it obligatory at least that I see that testimony and determine how much of it the defense is [808] entitled to have, with respect to whether or not *Mr. Allen* is now testifying truly as to what that testimony was.

Mr. Etter: Mr. Keane.

The Court: He says during recess hour he looked at it and finds he wasn't asked that question. Substitute Mr. Keane for Mr. Allen. Now, I think that should be given to me by the government.

Mr. Stocking: Mr. Denney has gone for it.

The Court: All right. There will be a recess of ten minutes. At the end of that ten minutes I would like it. We will convene; the jury will not come in.

(Short recess.)

(All parties present as before, and the trial was resumed.)

The Court: There has been handed to me what is labeled as "In the Matter of Independence Lead

(Testimony of Francis Clayton Keane.)

Mines Company, official report of proceedings before the Securities and Exchange Commission," in respect to the testimony of F. C. Keane apparently given on Wednesday, March 19, 1947. Now, there seems to have been suggested to me the bottom of page 122 and the top of page 123.

Mr. Stocking: And exhibit 11, if the Court please.

The Court: And it seems to refer to an exhibit that seems to be a carbon copy of Exhibit M in this case. [809] It seems to have been marked as D in some other transaction. Now, I assume that as far as this is concerned that I'm not privileged merely to refer to the defense that portion of this transcript that the government says refers to what Mr. Keane testified concerning the matter, but that to a degree I'm obligated to look at the transcript and see if there are any portions of it that bear either for or against the defendant's contention on this question of whether it was Mr. Keane that signed Mr. Allen's signature, or whether Mr. Keane at some other time was claiming that Mr. Allen wrote what Mr. Keane now admits was his writing. This transcript has in it apparently 117 pages. I don't mind reading to the defense now and putting in the record that part that's been marked as bearing on this proposition. Let me see Exhibit 10; let's see the other exhibits, exhibits 9 and 10 to this Securities and Exchange Commission transcript.

Mr. Stocking: Well, those were concerned with

(Testimony of Francis Clayton Keane.)

—I think they must be here, but those were concerned with something entirely foreign to this exhibit 11.

The Court: Well, I don't know.

Mr. Stocking: There was no connection with the defendant Allen.

The Court: Well, that's just what I wish to be able to say. I'd like to look at all the exhibits. [810]

Mr. Stocking: I will say that Mr. Denney and I looked through the whole transcript, he did this noon and I did during the recess, and could find no other reference to the note.

The Court: Well, counsel, in any event I feel that I should look at this transcript and then determine whether there is more of this transcript that should be made available to the defense than that portion which you wish to let them have. I'll read into the record what the transcript says on pages 122 and 123 during the examination of F. C. Keane.

Mr. Stocking: I don't think the defendant's name is mentioned in the rest of the transcript.

The Court: "Room 431 Post Office Building, Wednesday, March 19, 1947. Question: You have also handed me, Mr. Keane, a carbon copy of a letter or document which appears to be in the nature of an agreement bearing date October 14, 1944, that has not been completed. Answer: Let me write in the signatures that appear on the original. (Counsel handed paper to the witness) Question: You're

(Testimony of Francis Clayton Keane.)

adding the signatures in the blank spaces which appear on the second page of this exhibit? Answer: Yes. Question: You have added the signature of J. A. Allen and F. C. Keane beneath the words 'Montana Leasing Company'? Answer: That is right. Mr. Fegan: I'd like to have this [811] identified as commissioner's exhibit. Mr. Stocking: This exhibit will be identified as commissioner's exhibit No. 11 and admitted for the purpose of this investigation. Commissioner's exhibit 11 was admitted in evidence."

And it appears to me to be a carbon copy of the note itself, and apparently from what was said, Mr. Keane wrote out the signatures at that time on the carbon copy and you can compare the signatures as he wrote them and see if there appears to be any difference between those signatures as he wrote them and the signatures on the note itself. Now let me see 9 and 10.

Mr. Denney: Number 9 was a copy of the minutes of a director's meeting of Independence Lead.

The Court: How many exhibits were there altogether?

Mr. Stocking: Here's a list of the exhibits, your Honor. You'll notice that the first few are corporate records and audit reports and so on.

The Court: Well, I mean during Mr. Keane's testimony.

Mr. Stocking: There are no other exhibits that had any relation—

(Testimony of Francis Clayton Keane.)

The Court: The transcript only mentions 9, 10 and 11.

Mr. Stocking: That's correct. The other exhibits referred to other witnesses. [812]

The Court: Let me see 9 and 10.

Mr. Stocking: 9 is one of those that are in evidence.

The Court: Exhibit 10 as handed to me appears to be a set of documents and letters dated in 1939 and 1938, and I find no later dates than the year 1939 in Exhibit 10.

Mr. Stocking: Exhibit 9 was returned to the Independence Company. Parts of that exhibit, at least, are here in evidence. They were several sheets of these minutes of the meetings. These are the defendant's exhibits here, and the defendant may have a complete set of what we have.

The Court: Well, you have have these. I'll look at these and let you gentlemen know tomorrow morning. Mr. Keane will be required to be here tomorrow morning.

Mr. Stocking: Did you hear that, Mr. Keane?

Mr. Keane: Yes, I did.

Mr. Etter: That's part of it. I notice on my photostat it was marked exhibit 9. I think there were numerous directors' meetings reported.

The Court: Can you loan me this for the evening?

Mr. Stocking: Yes, your Honor.

(Testimony of Francis Clayton Keane.)

The Court: That will refresh my recollection of what is here.

Mr. Stocking: The question is, will we get an opportunity [813] to clear this up, then, with Mr. Keane tomorrow?

The Court: I don't know. Let me see exhibit 11 now, and the exhibit M to which it refers. You gentlemen have had an opportunity to look at 12 and 11. I'll give the clerk 11 and M. After I look at this I'll have a statement for you. It may clear it up, it may not.

Mr. Stocking: Some question may have been raised in the jurors' minds.

The Court: That's a risk you'll run, whether you'll be able to clear it up or not. You chose in your redirect to refer to a transcript by this witness.

Mr. Stocking: Well, I wanted to clear it up.

The Court: And if you've got a situation that you can't clear up, that's one of the risks of the attorneys. The jury may come in.

Mr. Stocking: Do I understand, then, that we're foreclosed from making any examination on this at this time?

The Court: On what?

Mr. Stocking: From making reference to the record at this time?

The Court: You can go as far as you want. All I'm telling you is, the more you talk about this record, the more you may be opening it all up.

(Testimony of Francis Clayton Keane.)

Mr. Stocking: Well, we have no fear about that.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

Redirect Examination  
(Continued)

By Mr. Stocking:

(Whereupon, copy of Defendant's Exhibit M was marked Plaintiff's Exhibit No. 95 for identification.)

Q. Mr. Keane, I'll hand you—

The Court: So there will be no misunderstanding, any statement that the Court made about you being permitted to examine as to the transcript means that it's subject to such objections as the defense may make, and subject to the ruling the Court may make as to such objections.

Mr. Stocking: I understand.

Q. I hand you what has been marked Plaintiff's 95 for identification, and ask you if you can identify that?

A. It's a carbon copy of Exhibit M.

Q. Defendant's M?

A. Defendant's M. It was signed at a different time; with the exception of the portion which is stamped on on the bottom, together with the figures that were entered there.

Q. And you're referring now to a stamp, "Se-

(Testimony of Francis Clayton Keane.)  
securities and Exchange Commission, Exhibit Number blank"? A. That's right.

Q. Now, with respect to the signatures on this carbon, Plaintiff's [815] 95 for identification, when were they—or I mean, who placed those signatures on that?

A. I placed them on both instruments.

Q. And when did you place them on Exhibit 95?

A. At the time of this hearing, whatever date it was, March 19, 1947, is the date that it is marked.

Q. And has your recollection been refreshed from the transcript of that hearing?

A. Well, I read at noon what it contained, or the reference to this exhibit or this note.

Q. And when this exhibit was produced at the hearing did it contain any names in the blanks?

A. It didn't. I put them on during the hearing before the Securities and Exchange Commission.

Q. And in their presence?

A. In their presence, yes.

Q. And do you recall having been asked at any other time during that hearing a question relating to whether or not Mr. Allen had signed the original which is identified as Defendant's M?

A. At no time have I ever maintained that the name J. A. Allen which appears on Exhibit M, or the one which you have now marked as being Exhibit 95, Plaintiff's Exhibit 95, were other than in my own handwriting.

Mr. Stocking: We'll offer 95 in evidence. [816]

(Testimony of Francis Clayton Keane.)

Mr. Etter: No objection.

The Court: Exhibit 95 admitted, no objection.

(Whereupon, Plaintiff's Exhibit No. 95 for identification was admitted in evidence.)

Mr. Etter: This of course is subject to your Honor's own ruling concerning the examination of the further part of the transcript.

The Court: Yes. So I'll have no misunderstanding, I'm assuming that you have no objection to Exhibit 95 being admitted?

Mr. Etter: No, we haven't, your Honor.

The Court: All right.

Mr. Etter: And would it be proper to ask your Honor to read that particular part of the text that has to do with this exhibit, following the examination of Mr. Keane, to the jury?

The Court: You'd like me to read it when?

Mr. Etter: Following the admission of this exhibit.

Mr. Stocking: We have no objection to that being read at the present time.

The Court: Is that all right, now?

Mr. Etter: Yes, your Honor, that part of it.

The Court: The Court has been handed what appears to be a transcript of the evidence of Mr. Keane taken before the Securities and Exchange Commission, apparently [817] at Spokane, Washington, on March 19, 1947, it appearing that Mr. John M. Fegan was the examining attorney for the

(Testimony of Francis Clayton Keane.)

Securities and Exchange Commission, it appearing that Mr. Donald J. Stocking, the attorney examining Mr. Keane now, having then been the trial examiner, and it appears that on pages 122 and 123 of such transcript that the following occurred: "Question (by Mr. Fegan): You have also handed me, Mr. Keane, a carbon copy of a letter or document which appears to be in the nature of an agreement bearing date October 14, 1944, that has not been completed. Answer: Let me write in the signatures that appear on the original (Counsel handed paper to the witness.) Question: You're adding the signatures in the blank spaces which appear on the second page of this exhibit? Answer: Yes. Question: You've added the signature of J. A. Allen and F. C. Keane beneath the words 'Montana Leasing Company'? Answer: That is right. Mr. Fegan: I would like to have this identified as commission's exhibit. Mr. Stocking: This exhibit will be identified as commission's exhibit No. 11 and admitted for the purpose of this investigation. Commission's Exhibit No. 11 was received in evidence."

Redirect Examination  
(Continued)

By Mr. Stocking:

Q. And can you identify that as the document referred to as commission's exhibit Number 11?

A. Yes; it's so marked on here. [818]

Q. And I'm referring to Plaintiff's 95?

(Testimony of Francis Clayton Keane.)

A. That's correct.

Mr. Stocking: If the Court please, at this time I'd like to re-offer Plaintiff's 19 for identification. This exhibit the Court held in abeyance pending its recollection of the testimony regarding two letters dated May 29, 1946, which appear in the exhibit, but which are unsigned. The exhibit was identified by the witness Nolting as having been received in their office in connection with the delivery of the stock certificates, and my recollection of the testimony is that Irene Vermillion testified all of these letters contained in Exhibit 19 had been prepared and mailed by her, together with the stock certificates.

The Court: This is Exhibit 19?

Mr. Stocking: 19, yes. There were these two letters that were unsigned, dated May 29, 1946. They're letters from the Pilot Company to E. J. Gibson, transmitting stock certificates. These are original letters taken from the broker's records, according to Miss Nolting's testimony.

The Court: Your objection continues?

Mr. Etter: Yes, your Honor.

The Court: Objection overruled.

Mr. Etter: Exception. [819]

The Court: Exhibit 19 admitted. I may advise counsel that I have checked my notes and have referred to them again at this time. Exhibit 19 is admitted, objection overruled.

(Testimony of Francis Clayton Keane.)

(Whereupon, Plaintiff's Exhibit No. 19 for identification was admitted in evidence.)

Mr. Stocking: There are still some exhibits that I offered last evening which were identified by this witness. I'm not sure whether the Court had—I think the Court had reserved a ruling on those, whether I should remind the court of it at this time while the witness is still here or not. Those were letters, the Elmer Johnston letters to this witness, and one was a copy of a letter by the witness Johnston to this witness, 80, 84, 86 and 88 and 85, which was the Johnston letter to Gibson to which was attached a copy of the underwriting agreement.

The Court: Well, you'll have to let me see them. Well, counsel, I'm very doubtful about 80 and 84; I'm more doubtful about 85, and I would rather discuss 86 and 88 in the absence of the jury. The jury may be excused a few minutes.

Mr. Stocking: I was going to suggest that—

The Court: Well, the jury might as well be excused.

(Whereupon, the following proceedings were had without the presence of the jury and two alternate jurors.) [820]

The Court: Exhibit 85 for identification is a letter by Elmer E. Johnston to the E. J. Gibson Company, and encloses what appears to be a copy of a communication sent by Glynn Evans to the E. J. Gibson Company. Of course, in a case of

(Testimony of Francis Clayton Keane.)

this kind once sufficient evidence has been submitted to justify a jury in finding that there was a conspiracy, the acts of any conspirator become evidence against all the others, whether they knew about the particular thing done or not. That's on the theory that a conspiracy is a partnership in crime. Just as in an ordinary legitimate partnership each partner is bound by what the other partner does, so in a criminal partnership each conspirator is bound by what his partner conspirator does, whether he happens to know of the single incident or not. It is a far cry from saying that because what Mr. Keane does is admissible against Mr. Allen, that what Mr. Johnston did in writing the letter to the Gibson Company is admissible against Mr. Allen, and I'm very doubtful of the admissibility of 85, so doubtful that at the present time I would not admit it. I've already said before that I don't think it makes much difference whether 80 was in evidence or not. It, however, instead of being a letter by Mr. Keane to Mr. Johnston, that is, instead of being an act of Mr. Keane, an alleged conspirator, is a letter that Mr. Johnston wrote. 86 and 88, if admissible, are admissible by reason of the cross-examination of Mr. Johnston. Counsel in leading questions to Mr. Johnston, which is permissible under the rules of evidence, had him indicate, at least, many transactions which would suggest that what Mr. Johnston had said or done to Mr. Allen had been about some-

(Testimony of Francis Clayton Keane.)

thing else than the Pilot, and letters 88 and 86 are written letters of Mr. Johnston back in 1946 saying what Mr. Allen did. For instance, 88 starts out this way; it is addressed to Mr. Keane: "Mr. Allen left with me copies of the articles of incorporation, by-laws, and material contracts in connection with the file, and I am now working on them," and later "Will you kindly go over this matter with Mr. Evans, and if necessary get in touch with Mr. Allen or Mr. Keane." Both from the standpoint of cross-examination of Mr. Johnston to show that Mr. Johnston was at least reporting to Mr. Keane Mr. Allen's activities, and also in support of Mr. Keane's testimony, it would seem to me that exhibit 88 is properly admissible.

Now, exhibit 86, a letter addressed by Mr. Johnston, addressed to Mr. Keane, contains this reference with reference to the Lucky Friday Extension: "However, I understood from Mr. Allen that minutes and resolutions looking toward the release of this stock in escrow would be delivered to me in order that I might take it to Olympia." [822] I'm letting you know that I'm inclined to admit 86 and 88, and I'm inclined to exclude exhibits for identification 80 and 85, and I'm somewhat inclined to exclude identification 84. Now, what you gentlemen have to say you had better say quickly.

Mr. Etter: No comments.

The Court: All right.

Mr. Erickson: Please the Court, I'd like to say

(Testimony of Francis Clayton Keane.)  
briefly about 84, I understand that's a letter by Johnston to Keane about the Lucky Friday Annual report.

The Court: I recognize that.

Mr. Erickson: That letter is written to one of the principals in the conspiracy about a vital part—

The Court: I recognize that. It doesn't mention Mr. Allen.

Mr. Stocking: Mr. Johnston testified that it was his recollection that as a result of that letter Mr. Allen finally brought in the report to his office.

Mr. Etter: I don't think that's Mr. Johnston's testimony, that Mr. Allen brought in any report.

Mr. Stocking: Or that he gave him a figure.

Mr. Etter: Certainly not.

The Court: Just a moment; if Mr. Johnston wrote this letter to Mr. Keane, it doesn't show Mr. Allen brought in the figures. It's going to be admitted in this case by [823] the defense that somebody gave Mr. Johnston some figures. There isn't anything in that letter that indicates it was Mr. Allen. Mr. Johnston's testimony is as weak or strong after that letter is in as it was before.

Mr. Stocking: Yes, I'll have to correct my statement. I think his testimony was he got the information either from Mr. Keane or Mr. Allen. I think we'll withdraw the offer of that exhibit.

The Court: All right. Whether Exhibit 80 goes in or not will be determined later. I'm going to reject exhibits 80 and 84. 85, as I understand it,

(Testimony of Francis Clayton Keane.)  
is—no, 84 is withdrawn. 80 and 85 will be rejected, 84 will be withdrawn, without prejudice to one side or the other offering them again if they wish, and I expect to admit in evidence exhibits 86 and 88.

Mr. Etter: Exceptions.

The Court: The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and two alternate jurors.)

The Court: It is my understanding that Exhibit 84, for identification, which plaintiff offered and to which defendant objected, has been withdrawn by the government, is that correct?

Mr. Stocking: That is correct. [824]

The Court: It's not necessary for me to rule; Exhibit 84 withdrawn.

(Whereupon, Plaintiff's Exhibit No. 84 for identification was withdrawn.)

The Court: Exhibits for identification 80 and 85 are rejected.

(Whereupon, Plaintiff's Exhibits No. 80 and 85 for identification were rejected.)

The Court: Exhibits 86 and 88 are admitted, the objections of the defendant overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 86 and 88 for identification were admitted in evidence.)

(Testimony of Francis Clayton Keane.)

Mr. Stocking: No further questions.

### Recross-Examination

By Mr. Etter:

Q. Mr. Keane, you heard the statement that his Honor Judge Black read from the transcript of the S.E.C. hearing? A. I did.

Q. And you stated that you were going to write the signatures on the exhibit, Plaintiff's 95, that appeared upon Defendant's Exhibit M?

A. Right.

Q. Is that right? A. Right.

Q. You didn't say you were going to write the names that [825] appeared, you said you were going to write the signatures, isn't that right?

A. Well, I didn't attach any significance to the use of either of the words or adjectives.

Q. You recognize, of course, there is a vast difference between a signature and a name?

A. There probably is, yes.

Q. And you didn't intend to convey that what you were writing was a signature at all, is that your testimony?

A. No, that is not my testimony. If I had been asked at that time, my testimony was that I was writing those signatures exactly the way they appeared on the original note.

Q. Well, Mr. Allen's signature didn't appear on the original note, though, did it?

A. Well, only insofar as I signed it.

(Testimony of Francis Clayton Keane.)

Q. In other words, if Mr. Allen writes your name out "F. C. Keane" you don't consider that's your signature, do you?

A. Under conditions, yes.

Q. I see. Now, did you have any discussion with any members of the commission, either in or out of that hearing, with respect to this note and the names?

A. I can't recall, other than I do know that we discussed it to the extent of the questions that you've just mentioned.

Q. You don't remember whether you had any discussion off the [826] record that doesn't appear in the transcript? A. Not that I recall.

Q. Did you have any later discussion about that with Mr. Denney or any other members of the commission or employees of the commission?

A. If I did, or if I were asked the direct question at any time, my answer to it would have been that I signed Mr. Allen's name to that exhibit M, I think it is.

Q. Yes. You don't recall that you had such a conversation?

A. I don't recall the conversation, if I had one.

Q. You don't recall that you had such a conversation with Mr. Stocking either?

A. Not that I ever remember of.

Q. Or with Mr. Erickson?

A. I never had it with Mr. Erickson, I know.

Q. Or with any other person that you can now recall? A. Nobody.

(Testimony of Francis Clayton Keane.)

Q. Now, at the time——

A. I'd like to withdraw that. I think possibly and probably Mr. Deney did state to me at one time that "Allen claimed that his signature on there was a forgery, and that you had signed it" and I said "That's correct, the part that I signed it is correct; I will not agree that it was a forgery." I think at one time I did have that conversation with Mr. Denney. [827]

Q. All right. Now, at the time that you produced this copy at the hearing as evidenced by the transcript which was read, where then was this original, Mr. Keane, Defendant's Exhibit M?

A. I couldn't tell you.

Q. You couldn't tell me? A. No.

Q. How did you happen to have this copy with you when you came down to Spokane?

A. Well, I think they subpoenaed certain records. I think that was enumerated among them.

Q. Well, did they subpoena a copy, or did they subpoena a note?

A. Well, I think they were furnished copies, rather than the originals.

Q. You had this in your office at that time?

A. That's my recollection of it, Mr. Etter.

Q. But you didn't bring it down with you?

A. I think that is correct.

Q. You brought the copy with you?

A. I think that is right.

Q. And is it your recollection now that at the time you were down here testifying, at which time

(Testimony of Francis Clayton Keane.)  
you submitted this copy, Plaintiff's Exhibit 95,  
that the original, Defendant's Exhibit M, was in  
Wallace in your office? [828]

A. I couldn't say positively, but that is my recollection.

Q. Isn't it a fact that when you came down to  
testify in front of the Commission you had not only  
this copy, but you likewise had the original with  
you?

A. It is within the realm of possibility that I  
did have the original with me.

Q. And on that date isn't it a fact that this original  
note bore only your own signature, on that date?

A. I don't think that is correct.

Q. But you think possibly you had it with you  
down here?

A. No, I didn't say that; I said I've got no independent recollection—

Q. Of having it with you?

A. —of having it with me.

Q. And you're sure that you didn't present it  
to Mr. Allen while you were down here?

A. No, I did not.

Mr. Etter: That's all.

#### Redirect Examination

By Mr. Stocking:

Q. There were a number of records of Independence  
(Testimony of Francis Clayton Keane.)  
which you did not produce on that date, is  
that correct? A. There were others, yes.

## Recross-Examination

By Mr. Etter:

Q. Did you produce the Defendant's Exhibit M for the Commission at a later time, the original note? [829] A. I probably did; I don't know.

Q. Do you recall when that was?

A. I don't know. I said I don't recall having ever produced that for the Commission.

Mr. Etter: That's all.

\* \* \*

(Whereupon, there being no further questions, the witness was excused.)

J. T. HALIN

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. J. T. Halin.

Q. Halin? A. Halin, yes, sir.

Q. And you'll have to speak loudly, Mr. Halin, so that all the jurors can hear your answers.

A. All right.

Q. Where do you live, Mr. Halin?

A. Spokane.

Q. And how long have you lived here?

A. 1906.

Q. What business are you in? [831]

A. Contracting.

Q. Do you know the defendant James Allen?

(Testimony of J. T. Halin.)

A. Yes, sir.

Q. Did you have any transactions with the defendant James Allen in connection with the purchase of Lucky Friday Extension Mining Company stock in the fall of 1945? A. No.

Q. Did you have a transaction in connection with the purchase of such stock in which Mr. Allen played a part? Was he connected with the transaction at all where you bought some stock?

Mr. Etter: I'm going to object to the form of that question; I can't just lay my hands—

The Court: Yes, I think that is right.

Q. I'll withdraw that question. Did you buy some Lucky Friday Extension stock from any of the defendants, Keane, Grismer, or Allen, in the fall of 1945?

A. I bought from Mr. Keane 200,000 shares; that's the fall of 1945.

Q. What date? A. 1945.

Q. And what was the date?

A. Well, I don't know exactly the date when the deal was consummated. The deal was made in Wallace, but I purchased the stock either 14th or 15th of October, 1945. [832]

Q. The 14th or 15th of October, 1945?

A. Either of those dates, yes.

Q. And how much did you pay for the 200,000 shares of Extension stock?

A. 10 cents a share.

Q. \$20,000? A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And what was the form of your consideration which you gave for them?

A. I gave him \$7,000 cash and a \$13,000 check.

Q. \$7,000 in cash and a \$13,000 check, and to whom was the check made payable?

A. The check was made payable to Clayton Keane.

Q. And to whom did you give this cash and check?

A. I gave this check and cash from Mr. Allen, when he delivered the stock.

Q. He delivered the stock where?

A. He delivered the stock to me, and I told him—

Q. Whereabouts?

A. At the room, at the Hotel Davenport.

Q. Here in Spokane? A. In Spokane.

Q. And did you have any later transactions with this defendant where you purchased some Extension stock?

A. The first transaction I had Mr. Allen was in January, 1946. [833]

Q. And how many shares did you purchase at that time?

A. Well, it was 75,000 shares Lucky Friday Extension.

Q. And what was the price you paid for that stock? A. Paid twenty-four cents and a half.

Q. Twenty-four and a half cents. Now, do you have in mind the names of the various brokers

(Testimony of J. T. Halin.)

through whom your stock that you purchased was sold? A. Yes, I have.

Q. Can you name them?

A. I practically done business with all of them, more or less.

Q. Yes, and what brokers did you sell this stock out to?

A. Well, I sold to E. J. Gibson, Paul Sandberg—

Q. Paul Sandberg?

A. Standard Security, I should say, and maybe Pennaluna.

Q. And W. J. Nichols? A. Yes.

Q. And L. E. Nichols? A. Maybe.

Q. Did you sell any through him?

A. I may have. I know I have done business with him.

Q. Do you recall in whose name some of those certificates were issued that were obtained by you in either of those two transactions?

A. No. Some was on, I think it's Irene Vermilion. I know some of those certificates was. [834]

Q. And did you have a nominee for your own?

A. Yes.

Q. And what was his name?

A. Well, some of the stock I put in a fellow by the name of G. R. Wilson who's working for me, and still working for me.

Q. And was some of this stock put in his name when it was delivered to you? A. Yes.

(Testimony of J. T. Halin.)

Q. Now, did you refresh your recollection or obtain a memo regarding the numbers of the stock certificates of Extension, certificates of this stock which was delivered by Mr. Allen which were sold out through Preston & Raef? Did you obtain a memo concerning that transaction?

A. From Preston & Raef? Yes.

Q. Do you have it?

A. I have it, yes.

Q. Will you produce it?

A. I just got this the other day, last Friday, I think.

Q. And can you give us the numbers? Would that enable you to testify as to the numbers of the certificates which you delivered to Preston & Raef, of this Extension stock.

A. You have a copy of the letter there, have you?

Q. Yes.

A. I furnished a copy of the letter to [835] Mr. Denney.

Q. Yes.

A. Why don't you read those numbers?

Q. In the first paragraph the memo refers to certificate number 1082, the name of G. R. Wilson, for 10,000 shares delivered to Preston & Raef October 15; does that refresh your recollection as to that certificate?

A. That must be the record; you know I got those from Preston & Raef.

(Testimony of J. T. Halin.)

Q. And on October 20, 1945, certificates number 1186 through 1210 inclusive for 25,000 shares. Does that refresh your recollection as to those certificates which were sold through Preston & Raef?

A. I had this record from Preston & Raef. I don't remember. Denney asked me, we went down to Preston & Raef, and get this record.

Q. Yes.

A. Because myself, I never yet tried to keep track of the numbers of stock certificates.

Q. You went to your broker and made a request for the numbers, that's correct, isn't it?

A. At Denney's advice; Mr. Denney and I both went there together.

Q. Yes; and on November 3, 1945, certificates number 1298 to 1307 for a total of 10,000 shares; November 16, 1945, certificates number 1250 through 1256 inclusive for a [836] total of 7,000 shares, and certificate number 1057 for 5,000 shares, making a grand total of 57,000 shares received from you, is that correct?

A. Well, you left off 7,000 shares for G. R. Wilson, then a thousand, left 75,000 shares; looks like it's to Irene Vermillion.

(Whereupon, letter Preston & Raef to J. T. Halin was marked Plaintiff's Exhibit No. 96 for identification.)

Q. Now, Plaintiff's 96 is the letter to which you have just been referring, is it not, Mr. Halin?

(Testimony of J. T. Halin.)

A. Yes.

Q. And you received that from your broker, Preston & Raef, concerning your transactions in 1945 in Lucky Friday Extension stock, and it gives the numbers of the certificates and the names which appeared on the certificates which you delivered for sale on the dates appearing in the letter, is that right? A. Yes.

Mr. Stocking: We want to offer at this time Plaintiff's 96 for identification for the purpose of identifying the certificates which were sold through Preston & Raef by Mr. Halin.

Mr. Etter: Your Honor, at this time we will stipulate that this is a letter of Preston & Raef, and [837] that Preston & Raef received a selling order on the dates set forth, and did dispose of the shares mentioned in the certificate numbers set forth herein; we will stipulate as to those facts, but we want to make our objection only to the materiality and the competency and the relevancy of the information. We will stipulate the information is correct, without calling Preston & Raef here to identify it.

The Court: All right, under those circumstances I'll overrule the objection, if you're making it.

Mr. Etter: Yes, I'm making the objection.

The Court: You realize that over your objection I would not permit this letter to be in evidence?

Mr. Etter: That's correct.

(Testimony of J. T. Halin.)

Mr. Stocking: I would not have offered it if the stipulation had not been arranged.

The Court: All right, under the stipulation waiving the necessity of the brokerage house, and under the stipulation conceding the correctness of the certificate numbers and so forth, the letter is admitted in evidence merely for the better understanding by the jury of the testimony of this witness.

Mr. Etter: And the objection we have taken, the ordinary objection to materiality and competency and relevancy, is overruled? [838]

The Court: Overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 96 for identification was admitted in evidence.)

Q. (By Mr. Stocking): Mr. Halin, with regard to your check in the sum of \$13,000, do you still have that cancelled check? A. No, I haven't.

Q. What happened to it?

A. Well, at the time, I rent part of my office and warehouse, and I destroy a lot of—

Q. Just briefly, what happened to it?

A. I destroyed a lot of records, and then Mr. Wilson, who was working for me, he got in the wrong file and he destroyed some of those records, but I have letter in my pocket, I got it from the Spokane and Eastern, show when check went through the bank.

Q. What date was that?

(Testimony of J. T. Halin.)

A. I'll have to look. October 17, 1945.

Q. That your check cleared back through your bank? A. Yes.

Q. In the sum of \$13,000? A. \$13,000 even.

Mr. Stocking: That's all. [839]

### Cross-Examination

By Mr. Etter:

Q. You've lived here, Mr. Halin, about 43 years?

A. Yes, sir.

Q. And you have been most of that time a general contractor? A. Well, I have, yes.

Q. And until several years ago that was your primary business?

A. I done the work here for Mr. P. F. Peterson about 15 years before I went into contracting for myself.

Q. Then you went into contracting for yourself about 1921 or 1922? A. About 1920.

Q. And you have been a general contractor since that time? A. I have been.

Q. And has it been customary with you, Mr. Halin, a customary practice, to purchase large blocks of mining stock in different corporations?

A. I have done it, yes.

Q. And you have, as you say, purchased considerable in Lucky Friday Extension?

A. Yes, sir.

(Testimony of J. T. Halin.)

Q. You did, over a period of time, and you've purchased in Silver Syndicate, isn't that correct?

A. Yes, I have purchased Silver Syndicate.

Q. Mohawk, and different mines?

A. I bought 250,000 shares Mohawk in one crack.

Q. Now, you say you made the purchase of the stock, arranged for it with Mr. Keane at Wallace, for 200,000 shares of Lucky Friday?

A. Yes, sir.

Q. And you made the deal with Mr. Keane?

A. I made the deal with Mr. Keane.

Q. That's at Wallace, Idaho?

A. Wallace, Idaho.

Q. Now——

A. May I go a little further?

Q. Yes.

A. I had done business previous Mr. Keane which prove satisfactory.

Q. You had done business before with him?

A. Yes. In the fall of 1944 I loaned Mr. Keane \$20,000 on Clayton Silver Lead stock, which I took as security.

Q. Oh, Keane had sold you prior to that time——

A. No, he didn't sell me; he loaned the money, because I have been in the practice of loaning money on real estate and mining stock.

Q. And he gave as collateral Clayton Silver Mine stock? A. Yes.

Q. Was that his stock?

A. I presume it was. He was recommended to

(Testimony of J. T. Halin.)

me as one of the prominent attorneys in the State of Idaho. [841]

Q. And you gave him that check for the Clayton Silver Mines?

A. Well, that's at that time, yes, sir.

Q. So you had had dealings with him before this?

A. But I didn't take the stock, I just took it as collateral, it laid around ninety days, or something; Mr. Keane instructed me to sell the stock, then when I receive his money, he receives his money, and I have the letter to prove.

Q. I see, and paid off the loan that way?

A. Yes.

Q. So you sold the Clayton stock that he pledged, and paid off the loan that you had made to him?

A. Yes.

Q. When was the first time that you had any business dealings with the defendant Allen in regard to purchase of any stock?

A. I think it was January, 1946.

Q. And that was the first time that you had any dealings with him?

A. That's the first time I had any dealings with Mr. Allen.

Q. I see. Mr. Halin, I might ask you, do you recall being or attending a meeting, or being with a group of people in Wallace that included Mr. Allen and Mr. Keane and Mr. Sekulic and yourself and

(Testimony of J. T. Halin.)

a couple of other gentlemen, when they discussed the Lucky Friday Extension? [842]

Mr. Stocking: We'll object to this as improper cross-examination.

The Court: Overruled.

A. Can I answer that?

Q. Yes.

A. Yes, that was the spring of 1945.

\* \* \*

(Whereupon, there being no further questions the witness was excused.)

### PAUL L. SANDBERG

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. Paul L. Sandberg.

Q. And what is your business?

A. Broker and dealer in securities.

Q. Under what name? [844]

A. Standard Securities Corporation.

Q. How long have you been in that business?

A. Oh, about—since 1931, for myself.

Q. And in Spokane?

A. In Spokane, yes.

Q. Are you acquainted with the defendant Allen? A. I am.

(Testimony of Paul L. Sandberg.)

Q. Do you carry an account for the defendant James A. Allen? A. I have had.

Q. Did you produce on request your account card? A. I have it here with me.

Q. Or account ledger. Did you also bring with you at our request your company's checks showing payments which have been made on this account of James A. Allen? A. I have.

Q. May I have those, please? And did you also bring with you your in-and-out record for Lucky Friday Extension Company's stock?

A. I have.

(Whereupon, in and out ledger of Standard Security on Extension stock was marked Plaintiff's Exhibit No. 97 for identification.)

(Whereupon, five checks to Allen from Standard Security were marked Plaintiff's Exhibit No. 98 for identification.) [845]

(Whereupon, account of J. A. Allen with Standard Securities was marked Plaintiff's Exhibit No. 99 for identification.)

(Whereupon, in and out ledger of Standard Securities on Pilot stock was marked Plaintiff's Exhibit No. 100 for identification.)

(Whereupon, five checks to Allen from Sandberg were marked Plaintiff's Exhibit No. 101 for identification.)

(Testimony of Paul L. Sandberg.)

Q. (By Mr. Stocking): Now, you have also handed me the in and out record for Pilot Silver Lead Mines Company stock, is that correct?

A. Correct. [846]

Q. And some payments reflected on the J. A. Allen account for the sales of Pilot stock?

A. That's right.

Q. Now, can you identify each of these exhibits for me, please, beginning with 97, just state what it is, briefly?

A. This is a record from the Standard Securities Corporation books of the Lucky Friday Extension certificates received and a description of them, and who they're delivered to after they leave our office again.

Q. It gives the certificate numbers on it?

A. That's right.

Q. And now referring to 98, what is that, please?

A. That is five checks issued by the Standard Securities Corporation.

Q. To whom?

A. Payable to J. A. Allen and James Allen.

Q. And are those checks reflected on Exhibit 99?

A. They are.

Q. And will you identify Exhibit 99, please?

A. That is an account record kept by the Standard Securities Corporation of an individual account with James A. Allen.

Q. And that's the defendant here?

A. That is.

(Testimony of Paul L. Sandberg.)

Q. And now identify Plaintiff's 100, please, for identification. [847]

A. That's a certificate registry sheet on Pilot Silver Lead showing certificates, a description of the certificates received as to number and date received and name they're issued in and to whom they were delivered in leaving our office.

Q. And both 97 and 100 are sometimes referred to as your in and out records, is that right?

A. In and out certificate record.

Q. Now refer to Plaintiff's 101 and identify that exhibit, please.

A. Five checks, my personal checks, payable to James A. Allen.

Q. And what were they given in payment for?

A. Various stock that I purchased from him personally.

Q. Are those reflected on the J. A. Allen account?

A. Not on that ledger card, no. These are personal transactions, and this is corporation records.

Q. That's your personal entry?

A. Stock that I bought from him personally.

Q. Then these checks aren't related to any of the stock which appears on these exhibits 97 or 100?

A. No.

Mr. Stocking: I'll not offer exhibit 101, which are the personal checks. I'll ask permission to withdraw that exhibit so it can be returned to Mr. Sandberg. At this time I'll offer 98, 99, 97 and 100. [848]

(Testimony of Paul L. Sandberg.)

Mr. Etter: May I ask a question on voir dire?

The Court: You may.

### Voir Dire Examination

By Mr. Etter:

Q. On this Plaintiff's identification 99, Mr. Sandberg, I notice the transactions begin July 25. What year does this cover? A. 1947.

Q. 1947; pardon me, I didn't see that.

A. It's up here in the corner.

Q. The first transactions then were had in July of 1947? A. That's right.

Q. And that covers all of these exhibits that I have here? A. I think so, yes.

Mr. Etter: I'm going to object to the admission of each and every one of these exhibits on the ground that they're incompetent, irrelevant and immaterial, and go to prove no issue in this case; they indicate that any transaction had was in July, the end of July, 1947, have no connection with any issue in the case, not binding on the defendant Allen as to any issue, don't go to prove any issue, they're incompetent, irrelevant and immaterial as they refer to the defendant Allen. [849]

\* \* \*

(Whereupon, at 4:55 o'clock P.M., the Court took a recess in this cause until Tuesday, June 14, 1949, at 10 o'clock A.M.)

Tuesday, June 14, 1949, 10 o'clock A.M.

(Seventh day of trial)

\* \* \*

The Court: You may proceed.

PAUL L. SANDBERG

a witness called on behalf of the plaintiff, resumed the stand and testified further as follows:

Mr. Stocking: I think I had proceeded to the point where I had offered in evidence Plaintiff's 97, 98, and 99, identified by this witness as records relating to transactions in Lucky Friday Extension account with the defendant James A. Allen.

Mr. Etter: Did I voice an objection, Mr. Reporter? Would you read that objection, please?

The Reporter: Mr. Stocking had also offered 100.

Mr. Stocking: Oh, yes, 100 was the Pilot in and out ledger.

The Court: Exhibits offered, you've made your objection; you'd like Mr. Taylor to read the objection?

Mr. Etter: Yes, your Honor.

(Whereupon, the reporter read Mr. Etter's objection appearing at typed page 790 of this transcript, just previous to the adjournment on June 13, 1949.)

The Court: Let me see the indictment, please, Mr. Clerk. As I understand it, the exhibits offered are 97, 98, 99 and 100?

(Testimony of Paul L. Sandberg.)

Mr. Stocking: Yes, your Honor.

The Court: Objections are overruled; exhibits 97, 98, 99 and 100 admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibits No. 97, 98, 99 and 100 for identification were admitted in evidence.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. I hand you what has been marked Plaintiff's Exhibit 101 for identification, a group of checks with slips attached thereto, and ask you if you can identify those? A. I can.

Q. And what are they? [852]

A. They're five of my personal checks drawn at various times payable to James A. Allen.

Q. And attached to these checks appear to be notations. Who made those?

A. Those are my notations.

Q. And what is the significance of those notations?

A. They are my memos of various amounts of stock I purchased from him, and the certificate numbers shown on there that were delivered to me.

Q. And what stock, of what company?

A. Pilot Silver and Lucky Friday Extension. There's also one check in there on a loan I made to

(Testimony of Paul L. Sandberg.)

him; I loaned him some money on some of this stock to start with, which I later bought from him.

Q. And is the certificate number written on the slip with respect to the loan? A. They are.

Q. And that stock that was given to you was given to you by whom? A. James A. Allen.

Q. And have you retained some of this stock as your personal property now?

A. It is my personal property right now.

Mr. Stocking: We'll offer in evidence Plaintiff's 101. [853]

Mr. Etter: May I ask just one or two questions on voir dire?

The Court: Certainly.

#### Voir Dire Examination

By Mr. Etter:

Q. Mr. Sandberg, these transactions you say were private transactions with Mr. Allen?

A. They were.

Q. On some of these did you bid Mr. Allen on the stock, do you recall?

A. He would ask me what I would pay for some stock, and I made him the bids.

Q. And you'd make the bids? A. Yes.

Q. And one or two of these attached to this exhibit, were stocks transferred to you for loans?

A. The stock wasn't transferred to me; he gave me the certificates as enumerated on there, collateral to the loan at the time it was made.

(Testimony of Paul L. Sandberg.)

Q. As collateral for the loans? A. Yes.

Q. That was the original transaction having to do with these? A. Yes.

Mr. Etter: I'm going to object to these as incompetent, irrelevant and immaterial to prove any issue in the indictment as laid against the defendant Allen; no [854] proper foundation or connection shown as to these transactions with any count laid in the indictment as charged against the defendant Allen.

The Court: Exhibit 101 is admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 101 for identification was admitted in evidence.)

The Court: You may proceed.

Mr. Stocking: That's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.)

#### E. R. ERICSON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Erickson:

Q. Will you state your name to the Court and jury, please? A. E. R. Ericson.

Q. And your business?

(Testimony of E. R. Ericson.)

A. Employed with the Old National Bank of this city.

Q. In what capacity, Mr. Ericson?

A. Assistant vice president.

Q. And how long have you been such?

A. About three or four years.

Q. And did you respond to court today under a subpoena duces [855] tecum to bring certain documents from the bank? A. I did.

Q. And do you have those documents with you?

A. Yes, I do.

(Whereupon, draft request to Old National Bank was marked Plaintiff's Exhibit No. 102 for identification.)

(Whereupon, cashier's check payable to J.

A. Allen for \$5,000 was marked Plaintiff's Exhibit No. 103 for identification.)

Q. I might ask you, Mr. Ericson, what the procedure is for issuing cashier's checks in the bank?

A. Cashier's checks are issued at the request of the customer.

Q. A written request?

A. A written request.

Q. And those checks are kept on file?

A. They are.

Q. I'll hand you Plaintiff's identification 102, and ask you what that is?

A. That is a draft request directed to the Old National Bank signed J. A. Allen, dated October

(Testimony of E. R. Ericson.)

15, 1945, for a cashier's check to be issued in favor of J. A. Allen for \$5,000.

Q. I'll hand you Plaintiff's identification 103, and ask you what that is?

A. That is a cashier's check of the Old National Bank dated [856] October 15, 1945, payable to the order of J. A. Allen, for \$5,000.

Q. Was that cashier's check, identification 103, issued in pursuance of identification 102, the request? A. Yes, it was.

Mr. Erickson: I'll not offer these in evidence at this time. I do not think they've been properly connected up. That is all; you may examine.

Mr. Etter: No cross-examination.

Mr. Erickson: That's all, then, Mr. Ericson may be excused.

The Court: Any objection?

Mr. Etter: Not at this time, your Honor, I don't believe there is.

The Court: Well, if I excuse him he's excused.

Mr. Etter: He may be excused.

(Whereupon, there being no further questions, the witness was excused.)

## F. C. GREENE

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. F. C. Greene.

Q. And what is your business?

A. Manager of a stock brokerage office in Butte, Montana. [857]

Q. And what is that brokerage office?

A. J. A. Hogle and Company.

Q. And were you so employed there—for how long were you employed there as manager?

A. Since 1941.

Q. Mr. Greene, did you have a transaction with Mr. James A. Allen in connection with some Lucky Friday Extension Mining Company stock?

A. Yes, sir.

Q. In 1945, December 3, on or about that date?

A. Yes, sir.

Q. Do you know Mr. James A. Allen?

A. Yes, sir.

Q. Is this the Mr. James A. Allen—

A. Yes, sir.

Q. —with which you had the transaction?

Now, Mr. Greene, what was the nature of that transaction?

A. I don't remember any details.

(Whereupon, notice of sales by Hogle of Ex-

(Testimony of F. C. Greene.)

tension stock, account of J. A. Allen, was marked Plaintiff's Exhibit No. 104 for identification.)

(Whereupon, check Hogle to Allen 12/3/45 was marked Plaintiff's Exhibit No. 105 for identification.)

Q. Mr. Greene, I'll hand you Plaintiff's identification 104 [858] and ask you to state what those are?

A. Those are confirmation of sales mailed to customers from our main office in Salt Lake.

Q. And what do those confirmations represent?

A. They show sales of 35,000 Lucky Friday Extension.

Q. For whom? A. For Mr. J. A. Allen.

Q. And what date? A. On November 29.

Q. Of what year? A. 1945.

Q. Now, Mr. Greene, I will hand you Plaintiff's identification 105, and ask you to state what that is?

A. That's a check made payable to Mr. Allen for \$6,872.95, signed by me, and mailed to Mr. Allen from *out* Butte office.

Q. And bearing what date?

A. Bearing date of December 3, 1945.

Q. Does identification 105 have any relation to identification 104, and if so, what?

A. It covers the sale of 35,000 Lucky Friday Extension on November 29.

The Court: How many thousand?

A. Thirty-five thousand.

(Testimony of F. C. Greene.)

Mr. Erickson: I will offer 104 and 105 in evidence. [859]

Mr. Etter: A few questions on voir dire.

### Voir Dire Examination

By Mr. Etter:

Q. Mr. Greene, was that the name?

A. Yes.

Q. Are you acquainted with F. C. Keane?

A. I think I met the gentleman once.

Q. Met him once; wasn't that on or about the date of these instruments?

A. That I don't remember.

Q. You don't remember? A. No, sir.

Q. Don't you remember that on the same—do you remember, rather, on the same day as these, on or about the time these instruments were executed and this Lucky Friday Extension stock was given to your company for sale, that Mr. Keane likewise gave your company a substantial share of Clayton Silver Mines stock?

Mr. Erickson: I object as improper cross-examination.

A. I really don't remember.

Mr. Erickson: I object as improper cross-examination, not having been gone into on direct.

The Court: Well, this is preliminary; I'll permit this question to be answered. [860]

Q. (By Mr. Etter): Was it handed to you in the name of O. Raredon?

(Testimony of F. C. Greene.)

A. That I don't remember.

Q. Do you remember at the time of this transaction that you sold some Clayton Silver Mines in the name of O. Raredon?

A. No, I don't remember; it's a long time ago.

Q. Well, do you remember whether Mr. Allen personally participated in this transaction?

A. Not definitely. I think he delivered the certificates to me personally.

Q. Are you sure that he did?

A. I'm not sure. I think he did, though.

Q. Could this check that you have *you* mailed—isn't it a fact that you mailed that to Mr. Keane's office in Wallace?

A. That I don't remember. I think it should have been mailed to Mr. Allen, unless he gave Mr. Keane's address.

Q. Or you're not sure whether Mr. Keane gave Mr. Keane's address to you and sold the stock in Mr. Allen's name?

A. No, he didn't do that.

Q. But you sent this check someplace, you think to Mr. Allen? A. Yes, sir.

Mr. Etter: That's all.

Mr. Erickson: Is there any objection?

Mr. Etter: Yes, we'll object on the ground it's incompetent, irrelevant and immaterial to prove any issue in this case; it's not joined up; no proper foundation has been laid.

The Court: Let me see it.

(Testimony of F. C. Greene.)

Mr. Erickson: Well, there's perhaps another question or two I should ask in view of the objection.

### Further Direct Examination

By Mr. Erickson:

Q. Mr. Hogle, or Mr. Greene, rather, will you explain each of the component sheets of the Plaintiff's identification 104? What do each of those sheets mean?

A. Well, one sheet shows the sale of 5,000 shares —do you want the price?

Q. To whom sold, yes.

A. It was sold to E. J. Gibson Company, brokers in Spokane.

Q. And the price?

A. The price, at 20 $\frac{3}{4}$  for 5,000 shares, 20 cents for 20,000 shares, 21 cents for 10,000 shares.

Q. Go ahead and explain the rest of it.

A. Well, what explanation do you want?

Q. Is that all the explanation?

A. That's all. That was sold to the Spokane broker.

Mr. Erickson: Very well, then, I will pass them up to the Court.

Mr. Etter: What number was that exhibit?

Mr. Erickson: 104 and 105; the check was 105. At [862] the same time I'd like to have the court consider the stock certificates. I have some more questions to ask.

(Testimony of F. C. Greene.)

The Court: What exhibit?

Mr. Erickson: That's an identification, not an exhibit; it's 50-a.

Mr. Stocking: Identified by Elmer Johnston.

Mr. Erickson: There's another question I would like to ask the witness about identification 50-a, the certificates.

The Court: Has there been any evidence as to whether the certificates referred to on the first three sheets or the red sheets of identification 104 have any relation to the certificates shown on the last three sheets or the white sheets of the same identification?

Mr. Erickson: No. That's the next question I was going to ask the witness, in view of the objection that's been raised.

The Court: All right, ruling reserved.

#### Direct Examination

(Continued)

By Mr. Erickson:

Q. Mr. Greene, I will hand you Plaintiff's identification 50-a, and ask you to state what those are?

A. Those are stock certificates representing Lucky Friday Extension Mining Company.

Q. And where did you receive those stock certificates?

A. Well, according to our records, certificates 1178, 1179, [863] 1181, 1182, 1183, 1184, and 1185 were received from Mr. Allen.

(Testimony of F. C. Greene.)

Q. Are those the same stock certificates that are covered in Plaintiff's identification 104?

A. Well, according to our records, that's what it shows, yes, sir.

Q. These are the same stock certificates that were sold by your concern to E. J. Gibson?

A. That's right; those were the same numbers we have.

Mr. Erickson: I renew the offer now of 104 and 105.

Mr. Etter: Just one minute on voir dire.

Mr. Erickson: Just a minute, I'll complete my direct all at once here.

Mr. Etter: All right.

Q. (By Mr. Erickson): On these attached slips here to Plaintiff's 50-a, what are those attached slips, containing stamps and so forth? Do you identify those?

A. No, I can't. They're from E. J. Gibson Company. They just show a stock transfer paid on it when delivery is made, they show stock transfer.

Q. Those are put on by the broker through whom the stock is sold to the public?

A. That's right. Well, they just show the transfer tax being paid. [864]

Q. That is the statutory tax according to—

A. The Federal tax.

Q. The Federal tax according to Federal statute?

A. Yes.

(Testimony of F. C. Greene.)

Mr. Erickson: I will also offer 50-a at this time again.

Cross-Examination

By Mr. Etter:

Q. Do you keep what we call an office card or a card on the individual?

A. We keep a record on the transaction showing the number of certificates that are delivered to us, and in turn that we send to the broker we sell it to.

Q. Does the card indicate who delivered the certificates to you?

A. It would show from the account it was sold in; it would show that Mr. Allen, who sold it, delivered the certificates.

Q. Would it show a manual physical delivery by him, or would it show mailing from him?

A. No, It would show—well, it doesn't make any difference if it was received through the mail from him, it would still show it was received from him, or if it was received by hand it would show the same thing.

Q. But all you would have on your card was "Received from Mr. Allen December 5, 1945," or thereabouts, what date is it? [865]

A. I think the receipt would show the same date it was sold, November 29.

Q. Your office record doesn't indicate whether it was manually delivered to you or received through the mail?

(Testimony of F. C. Greene.)

A. That's right, it wouldn't show.

Q. Does your office record indicate the—I think you said the check was mailed, however?

A. The check was mailed from Butte to Mr. Allen.

Q. And does your record show where it was mailed? A. No, I don't believe so.

Q. Do you know whether you carry an account at this time, Mr. Greene, in your office, or carried an account about that time under the name of O. Raredon? A. No, I don't.

Q. Are you saying that you didn't carry it?

A. No. I don't remember.

Q. Did you carry an account at that same time or approximately there, November 29, under the name of F. C. Keane?

A. That I wouldn't remember.

Q. That you wouldn't remember? A. No.

Q. Would you remember whether or not any Clayton Silver Mines stock was sold either through the account you have listed to J. A. Allen, F. C. Keane, or O. Raredon?

Mr. Erickson: To which we object as improper cross-examination, [866] about Clayton Silver.

A. I still don't remember.

Q. You still don't remember?

A. No, sir, I'm sorry.

The Court: The ruling is unnecessary.

Q. Would it be possible for you to get that information?

(Testimony of F. C. Greene.)

A. Oh, I suppose we might find it in our records. Which information do you refer to?

Q. Whether or not you carried accounts on or about this date, that is, November 29, between there and the middle of December of 1945, either in the name O. Raredon, or F. C. Keane, and whether or not any Clayton Silver Mines stock was sold through either of those two accounts or the account of J. A. Allen on or about the same time as this transaction.

A. I believe we could find that information out in our records.

Q. All right, will you do that?

Mr. Etter: I'm going to object to the admission of this exhibit on the ground it's incompetent, irrelevant and immaterial, the evidence indicates no proper foundation or identity to prove any issue laid in the indictment as against the defendant Allen.

The Court: That's Exhibit 50-a?

Mr. Etter: This is Exhibit 50-a, your Honor.

The Court: Admitted; objection overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 50-a for identification was admitted in evidence.)

The Court: You may let me see Exhibits 104 and 105; I have reserved ruling as to them. Exhibits 104 and 105 are admitted.

Mr. Etter: An objection.

The Court: Objection is overruled.

(Testimony of F. C. Greene.)

Mr. Etter: And exception.

(Whereupon, Plaintiff's Exhibits No. 104 and 105 for identification were admitted in evidence.)

Mr. Erickson: That's all for Mr. Greene?

Mr. Etter: That's all. [868]

\* \* \*

(Whereupon, there being no further questions, the witness was excused.)

### ELWOOD V. DENNEY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Stocking:

Q. Will you state your name, please?

A. My name is Elwood V. Denney. I'm an investigator with the Securities and Exchange Commission, and have been continuously for the last thirteen years. I'm attached to the Seattle Regional Office. I'm also a licensed public accountant in the state of Washington. My experience prior to my employment with the S.E.C. was about eight years in the securities business, and a few years prior to that with one of the commercial banks in Seattle.

Q. Have you ever qualified or testified as an accountant in Federal Court?

(Testimony of Elwood V. Denney.)

A. Yes, I have. I've qualified previously in this court, also in the Western District of Washington, and in the State of Idaho.

Q. In the District Court, the Federal District Court, in Idaho? [869] A. Right.

Q. In connection with several cases?

A. Yes, several cases.

Q. And in your work with the Securities and Exchange Commission what does that work consist of?

A. Well, the work is of various types. Some of it is administrative work, giving information about the acts which we administer, principally the Securities Act of 1933, and making investigations of cases similar to this.

Q. What is your work with regard to brokerage houses?

A. The Commission is charged under the Securities and Exchange Act of 1934 with making inspections of brokerage houses, making inspections in securities over the counter as well as on stock exchanges, and looking into the financial condition of brokerage houses principally by means of annual financial reports. I've done work in all those connections for the Commission.

Q. And in your investigative work do you examine the books and records of corporations?

A. Yes, when necessary in investigations we go to the books and records of the broker dealers in securities for the information we need.

(Testimony of Elwood V. Denney.)

Q. I mentioned corporations.

A. Yes, and also corporations, such as Lucky Friday Extension and Pilot Silver Lead. [870]

Q. Now, in connection with this case did you make an examination of the corporate records of those two companies you just mentioned?

A. Yes, I made an inspection and obtained the records such as were available for these two companies.

Q. When did you commence this examination?

A. This investigation commenced early in 1947, about February or March, 1947.

Q. Are you referring now on that date to the examination of these particular companies?

A. The investigation originally started in connection with Independence Lead Mines Company, which has been mentioned here. The Securities Exchange Act requires all companies whose stock is listed on a stock exchange in the United States to file annual reports with the Commission, and since Independence Lead is listed and registered on the Spokane Stock Exchange, it was and has been required to file these reports, and those reports according to law must be in within 120 days after the end of the year. In the case of Independence Lead those reports should have been filed by April 30 of each year. The last report prior to this investigation was filed early in 1943 for the year of 1942. Up to 1947, that is, the late 1946 and early 1947, annual reports had not been filed

(Testimony of Elwood V. Denney.)  
for 1943, 1944 and 1945. When the inspection started the report for 1946 was not yet [871] due.

Q. And when did you begin your investigation of these two companies?

A. These two companies? Well—

Q. I refer to the Pilot and the Extension.

\* \* \*

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mr. Denney, I think at the recess I was asking you questions concerning the beginning of this investigation in [872] regard to Pilot and Extension. I'll ask you, was there or was there not any complaint received from any party at the beginning of this investigation on these two companies?

A. No.

Q. And what was the commencement of this investigation?

A. During our inquiry into Independence Lead, we discovered that funds of Pilot and Lucky Friday Extension had been transferred to Montana Leasing Company.

Q. And your inquiry into Independence was about March, 1947, as shown by the testimony read yesterday? A. Yes.

Q. And about what date was this discovery made?

A. It was made I believe in March, 1947.

(Testimony of Elwood V. Denney.)

Q. About the end of March?

A. I don't recall the exact date.

Q. Now, what examination of these companies' records did you make?

A. The Lucky Friday Extension and the Pilot Silver Lead had bank statements, cancelled checks, duplicate deposit slips, cancelled stock certificates, the stubs for stock certificates issued, and stockholders' ledgers. I examined those records.

Q. And did you from those records prepare a schedule showing the original issue of the Lucky Friday Extension Mining Company shares? [873]

A. Yes.

Q. Did you also prepare a schedule showing the summary of the funds deposited in the Lucky Friday Extension Mining Company bank account at the Idaho First National Bank in Wallace?

A. Yes.

Q. Did you also prepare from the company records a summary of the checks drawn on and other charges to this Extension bank account for the period of July 23, 1945, to March 13, 1947?

A. Yes.

Q. Did you also prepare a summary of checks drawn on the bank account of Lucky Friday Extension Mining Company from July 23, 1945, to March 13, 1947, indicating a breakdown of the checks to Montana Leasing, checks to Lexington Silver Lead Mines, Inc., and checks made out to Lucky Friday Silver Lead Mines Company, the Big Friday?

(Testimony of Elwood V. Denney.)

A. Yes.

Q. Those last two summaries I mentioned were prepared as one exhibit, were they not?

A. Yes, they're stapled together.

Q. Did you also prepare a list of the checks drawn on the Extension bank account showing the check number where indicated, the date and amount, and the name of the payee, and the total amount?

A. Yes; that list also includes bank service charges.

(Whereupon, schedule of original issue of Extension stock was marked Plaintiff's Exhibit No. 106 for identification.)

(Whereupon, schedule of deposits to bank account of Extension Co. was marked Plaintiff's Exhibit No. 107 for identification.)

(Whereupon, summary of checks and bank charges on Extension bank account was marked Plaintiff's Exhibit No. 108 for identification.)

(Whereupon, list of checks drawn on Extension bank account was marked Plaintiff's Exhibit No. 109 for identification.)

Q. Did you cause these schedules of yours to be prepared in typewritten form?

A. Yes. I first prepared them in my own handwriting, and they were subsequently typed, and then I checked them back against my typewritten schedule.

(Testimony of Elwood V. Denney.)

Q. I'll hand you Plaintiff's 106, 107, 108 and 109, and ask you to identify each of those, please, by number. I think I'd identify each one separately.

A. 106 is a typewritten copy of my schedule, 107 is also a typewritten copy of my schedule, 108—

Q. Identify what schedule, please.

A. 106 shows the original issuance of Lucky Friday Extension Mining Company shares. 107 shows a summary of deposits into the bank account of Lucky Friday Extension at the [875] Idaho First National Bank at Wallace. 108 is a summary of checks and other charges to the bank account of Lucky Friday Extension at the Idaho First National Bank, Wallace, together with a breakdown of checks to Montana Leasing, to Lexington Silver Lead, and to the Big Friday. 109 is a chronological list of checks drawn on the Lucky Friday Extension bank account from July 23, 1945, to January 18, 1947.

Mr. Stocking: At this time we'll offer 106, 107, 108 and 109.

Mr. Emigh: We'd like to conduct an examination preliminary to objections, if we decide to make objections.

The Court: Surely.

#### Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, Plaintiff's Exhibit 106 purports to be a summary of the original issue of the Lucky

(Testimony of Elwood V. Denney.)

Friday Extension Mining Company shares. Is this based entirely upon exhibits which are now introduced in evidence? A. Yes.

Q. All of the stock books of this corporation have been introduced in evidence?

A. This was prepared from the stock certificate stubs of Lucky Friday Extension.

Q. Introduced in evidence? A. Yes. [876]

Mr. Stocking: Now, just a moment. I don't think the stock certificate stubs were introduced in evidence. They were identified.

Mr. Emigh: That doesn't make them part of the record.

Q. (By Mr. Emigh): Calling your attention to Plaintiff's Exhibit 107 I'll ask you if that summary includes all funds deposited in the bank account of the Lucy Friday, I believe that's what it purports to show— A. Yes.

Q. —during the period of your examination, covered by your examination?

A. This is the summary of the deposits found in the records available to me for Lucky Friday Extension.

Q. Well, what records were available to you?

A. The bank statements and the bank deposit slips.

Q. Covering what periods?

A. During the period of July 23, 1945, to January 3, 1947.

(Testimony of Elwood V. Denney.)

Q. And those records I believe are in evidence here? A. They are.

Q. Now, you have plaintiff's Exhibit 108, which purports to be a summary of checks on and other charges to the bank account of Lucky Friday Extension Mining Company, July 23, 1945, to March 13, 1947. Now, in preparing that did you have all of the checks which were drawn during that period?

A. Yes.

Q. All of the checks, and these checks balanced and checked with the bank account? A. Yes.

Q. And you had the bank account?

A. Yes, and they're in evidence.

Q. And they're in evidence?

A. And 108 is a summary of the list of checks found on 109.

Q. And did that list account for all withdrawals shown on the bank account? A. Yes.

Q. Now, you purport to have—that was 108—109, is that a breakdown of the checks included in the summary, Plaintiff's Exhibit 108?

A. Yes. 109 is a list of the actual checks drawn and paid through the bank, together with service charges by the bank. 108 is a summary of that list for the use of the jury.

Q. And you found no missing checks in connection with that examination?

A. The checks were accounted for.

Q. The checks were accounted for?

A. And are in evidence.

(Testimony of Elwood V. Denney.)

Q. Then it would be your testimony in connection with these exhibits 106 to 109 that the records of the Lucky Friday [878] Extension Company did show all funds deposited and withdrawn, and the persons to whom those withdrawal were paid, during that period, is that right?

A. The checks so indicate.

Q. To make the record clear, that is a complete record, those four exhibits make a complete record of these transactions, is that correct?

A. Yes. The first one makes a complete record of original issuance of Lucky Friday stock. 107 is a complete record of funds that went into the bank account of Lucky Friday Extension, and 108 and 109 account for the withdrawal of those funds.

Q. Now, one more question, I believe, Mr. Denney; these records were made available to you by whom?

A. They were made available to me by Mr. Keane and Mrs. Vermillion.

Q. Yes, and they were officers in charge of the records of the Lucky Friday Extension Mining Company?

A. The records were in Mr. Keane's office.

Q. Yes, and he had had charge of those, from what your investigation disclosed, at all times?

A. As far as I know the records were continuously in his office until we got them—no, I'll change that—some of the records were turned over to Mr. Allen later on, that is, the stock records, stock

(Testimony of Elwood V. Denney.)

certificate stubs, and the [879] stockholders' ledgers which were subpoenaed in connection with our investigation, are still in Mr. Allen's possession as far as I know. We've never asked for them.

Q. Well, any of these records that were there, were they partial records? That is, did you find on any occasion just a portion of the records, and not complete records? To refresh your memory, did you find any cancelled checks of the Delaware Company?

A. Well, the Delaware is not in these exhibits. These exhibits relate to Pilot and Lucky Friday Extension.

Mr. Emigh: I think there's no objection.

The Court: There's no objection to exhibits 106, 107, 108 and 109?

Mr. Emigh: I beg your pardon, your Honor; I think our statement is that there's no objection to this going in as a summary, but subject to our objections made to any specific exhibit which might be reflected therein. We don't want to waive that objection.

The Court: All right; now I am interested in this, and that is whether or not all of these records have been more than identified, particularly in view of Mr. Denney's statement that some of these records have been returned to Mr. Allen. What is the case?

Mr. Stocking: The stock certificate stubs were the ones I think that he referred to that were in

(Testimony of Elwood V. Denney.) evidence, and [880] I corrected him and said that they were only identified. It's my understanding of the law that that was sufficient.

The Court: So there will be no misunderstanding, I'm correct then in my recollection that some of these exhibits had not been admitted?

Mr. Stocking: That's correct, your Honor; the stock certificate stubs have not been admitted; they're here and marked.

The Court: You may ask your witness, then, as to that, because he has them now admitted, and you have them not admitted.

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mr. Denney, were you correct in your statement that the Extension stock certificate stubs were admitted in evidence?

A. Yes, I corrected it upon information from Mr. Stocking, the exhibits were offered but not admitted, that is, the stubs.

Q. They were identified here as exhibits?

A. That's right.

The Court: Exhibits 106, 107, 108 and 109 admitted, no objection.

(Whereupon, Plaintiff's Exhibits No. 106, 107, 108 and 109 for identification were admitted in evidence.)

The Court: It's understood that the fact that

(Testimony of Elwood V. Denney.)

the [881] defense has not objected to the admission of these exhibits in no wise constitutes a waiver of objections to any exhibits referred to either directly or indirectly by such exhibits 106 to 109 inclusive.

Mr. Stocking: May I refer briefly to some of these exhibits?

The Court: You may.

(Whereupon, Mr. Stocking read portions of Exhibits 107 and 108 to the jury.)

Q. (By Mr. Stocking): Now, did you prepare similar summaries with regard to the records of the Pilot Silver Lead Mines, Inc.? A. Yes.

(Whereupon, schedule of original issue of Pilot stock was marked Plaintiff's Exhibit No. 110 for identification.)

(Whereupon, schedule of deposits to bank account of Pilot was marked Plaintiff's Exhibit No. 111 for identification.)

(Whereupon, summary of checks and bank charges on Pilot account was marked Plaintiff's Exhibit No. 112 for identification.)

(Whereupon, list of checks drawn on Pilot bank account was marked Plaintiff's Exhibit No. 113 for identification.)

Q. I'll hand you Plaintiff's for identification 110, 111, 112 and 113, and ask you to identify each of those. [882]

(Testimony of Elwood V. Denney.)

A. Number 110 shows the original issuance of Pilot shares. Number 111 is a summary of deposits of funds in the Pilot bank account at the Idaho First National Bank from May 22, 1946, to February 26, 1947. Number 112 is a summary of checks drawn on and other charges to the bank account of Pilot at the Idaho First National from May 22, 1946, to February 26, 1947. Number 113 is a chronological list of checks drawn on the Pilot bank account at the Idaho First National, together with bank service charges.

Q. And these are the summaries which were prepared by you? A. Yes.

Mr. Stocking: We'll offer 110, 111, 112 and 113.

#### Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, Plaintiff's Exhibit 110, which purports to be original issue of the Pilot Silver Lead Mines, Inc., you may state if all of the records which you examined in preparing this schedule have been admitted to evidence in this case?

A. I don't recall if the stock certificate stubs are actually admitted or not.

Mr. Stocking: I believe they're just identified.

Mr. Emigh: They were identified?

Mr. Stocking: Yes.

Mr. Emigh: Were they admitted?

Mr. Stocking: No, not admitted; identified.

Q. (By Mr. Emigh): Then the stock certificate

(Testimony of Elwood V. Denney.)

stubs that you examined were not admitted in evidence here? A. I'm so advised.

Q. They were produced in court, however?

A. Yes, they are in court, and they were used by me in the preparation of this schedule.

Q. And in relation to Plaintiff's Exhibit 111, which is a summary of deposit of funds in the bank account of the Pilot Silver Lead from May 22, 1946, to February 26, 1947, I'll ask you if all of the records from which this schedule was prepared are in evidence here in this case? A. Yes.

Q. And in relation to Plaintiff's Exhibit 112, which purports to be a summary of checks drawn and other charges to the bank account of the Pilot Silver Lead Mines, Inc., I'll ask you if the records upon which this schedule is made are all admitted in evidence?

A. The checks as to 112 and 113 are in evidence.

Q. And was that all the checks of this corporation which you found?

A. Yes, those were all of the checks and bank debits.

Q. And did you find that there were any missing checks?

A. I don't recall having found any missing checks.

Q. Would you say you did or didn't?

A. They were all there, as I recall. [884]

Q. Well, then, there weren't any missing checks, that's your answer now?

(Testimony of Elwood V. Denney.)

A. That's right, there were none missing that I recall.

Q. And is it true that all of the checks drawn on the bank account of the Pilot Silver Lead Mines as reflected by your schedule 113 are in evidence?

A. Yes.

Mr. Emigh: We have no objections, may it please the court, to these exhibits, reserving, however, our objections to the exhibits of which these exhibits purport to be a compilation or a schedule. We do not wish to waive our objections to the original exhibits.

The Court: You have offered these, have you, Mr. Stocking?

Mr. Stocking: Yes, I have offered these.

The Court: Exhibits 110, 111, 112 and 113 are admitted, no objection, but the fact that the defense has not objected to these exhibits in no wise constitutes a waiver of objections heretofore made to exhibits referred to by these four exhibits.

(Whereupon, Plaintiff's Exhibits No. 110, 111, 112 and 113 for identification were admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Plaintiff's Exhibits 111 and 112 to the jury.)

(Testimony of Elwood V. Denney.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Now, Mr. Denney, in connection with the exhibits reflecting the issuance, the original issuance of stock, did you have occasion to determine who received the proceeds from that stock when it was sold by brokers? A. Yes.

Q. And what investigation did you make concerning the stock of both Extension and Pilot?

A. To determine what disposition was made of the Lucky Friday Extension stock issued to J. V. Grismer, certificate number 14 for 1,229,700 shares, certificate 15 for 300,000 shares issued to Keane, and certificate 16 for 200,000 shares issued to Elmer Johnston, I went to—

The Court: How much was that to Elmer Johnston?

A. Number 16, 200,000 shares; I called at the brokerage houses in Spokane and Wallace to check their records.

Q. What records did you check there?

A. I checked their purchases and sales records, their so-called in and out record sheets, which show certificates coming into the office and the same certificates going out of the office. I checked the individual account cards, and the checks issued by these brokers.

Q. And did you determine whether or not any of that stock of Extension, stock on those certificates

(Testimony of Elwood V. Denney.)

14 and 15, were sold by the defendant [886] J. A. Allen?

Mr. Emigh: Now just a minute before you answer that; have you finished your question?

Mr. Stocking: Yes.

Mr. Emigh: To which, may it please the Court, we object on the ground and for the reason that this is invading the province of the jury; this is the very thing the jury has got to determine from the exhibits in this case; that this evidence calls for a conclusion of the witness; it is not proper evidence for the purpose of producing summaries to save examination of a large number of exhibits; that this is hearsay, incompetent, irrelevant and immaterial and based on hearsay evidence, and calls for a highly prejudicial statement from this witness without a proper foundation being laid.

The Court: I think his answer is preliminary; can it not be answered yes or no?

Mr. Emigh: I beg your pardon; that's just exactly the thing we want to guard against, because we can't strike that answer out or eliminate it.

Mr. Stocking: I'll reframe the question.

Q. (By Mr. Stocking): Did you determine whether or not any of the stock transferred from certificate number 15 for 300,000 shares issued to F. C. Keane on July 6, 1945, for legal services, was sold by the defendant Allen? Just answer that yes or no. [887]

A. Yes.

(Testimony of Elwood V. Denney.)

Q. And did you make up a schedule tracing the stock certificates? A. Yes.

Q. Which were so sold? A. Yes.

(Whereupon, summary of sales by Allen of Extension stock from certificate 15 was marked Plaintiff's Exhibit No. 114 for identification.)

The Court: It is now 12 o'clock. The jury should be excused until 1:30. The jury is excused until 1:30. The jury will remember the admonition of the court to all phases of this case and all persons connected with it and as to all evidence. The jury is excused until 1:30. The trial is still in session.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: By reason of certain matters that the court felt needed attention, the attorneys trying this case were deprived of a total of twenty minutes this morning. It's now 12 o'clock. I'm a little interested in an outline of such exhibits as you expect to put in by Mr. Denney, and I can discuss them a little more freely in the absence of the jury. Apparently you have a schedule as to [888] Mr. Keane's original certificate 15. Now, what other schedules of this witness do you expect to put in evidence?

Mr. Stocking: A schedule for certificate 14,

(Testimony of Elwood V. Denney.)

that's the J. V. Grismer Extension stock, 1,229,700 shares and—did we have one for 16?

Mr. Denney: No.

Mr. Stocking: We have Pilot—

The Court: You have them for 14 and 15. What about 16?

Mr. Stocking: Just a minute until I confer. I didn't find any for 16. You mentioned 16.

Mr. Denney: No, there's none for 16.

The Court: All right, we'll go somewhere else. What else do you have?

Mr. Stocking: Pilot, transferred from certificates 13 and 14, which was issued in the name of F. C. Keane, issued on the purchase of the Cincinnati and Phelan groups of mining claims—

The Court: I want all of the schedules, whether they apply to the Pilot or Extension or not, that you're expecting to put in by Mr. Denney.

Mr. Stocking: Yes. I'll say to the Court that we're eliminating—I think that's all of the schedules we expect to put in that apply to Extension or Pilot, is [889] it not, Mr. Denney? We'll put in without a schedule testimony regarding 16. That was the stock that went to Mr. Halin.

The Court: Mr. Who?

Mr. Stocking: Mr. Halin, showing the source of Mr. Halin's stock that was sold out. Then we expect to put in through Mr. Denney a summary of the deposits in the Montana Leasing Company.

The Court: Summary of what?

(Testimony of Elwood V. Denney.)

Mr. Stocking: Of the deposits in the Montana, showing the source of the deposits from the deposit slips; it's really a summary of the deposit slips in the Montana Leasing Company, reflection of the deposit slips and the bank statements; a summary as to checks signed by J. A. Allen on Montana Leasing Company and Lexington Silver Mines, Inc., giving the date, amount and payee, and total by months for the months of July, 1945, through August, 1946, and a total of all of those checks showing J. A. Allen's expenditures from Montana Leasing Company by check during that period of time; a summary of the bank statements of Montana Leasing Company showing the condition of the bank account at various times that Lucky Friday Extension Mining Company and Pilot Silver Lead Mines, Inc. deposits were made on the dates of the deposits, showing the number of overdrafts that existed or the low balances [890] that existed, and then we have one more schedule which was prepared as a result of our controversy over the Randall exhibit identified by defendants, and this is a breakdown of the payments which were made on the Randall exhibit, which were shown as for the years 1943, 1944 and 1945. It shows a breakdown by—

The Court: Of what?

Mr. Stocking: By dates of the Independence proceeds.

The Court: Independence Lead?

Mr. Stocking: Yes, from Independence to Mon-

(Testimony of Elwood V. Denney.)

tana Leasing. That came up yesterday in connection with Mr. Randall's audit, and I had stated that we would obtain the figures for this breakdown for Mr. Etter.

Mr. Emigh: Mr. Stocking, are you through with your statement?

Mr. Stocking: Just a minute until I confer. I don't believe I have overlooked any.

The Court: All right. Now, as I understand it from what's been offered, Mr. Emigh, you're going to object to certain of these schedules. I'm not requiring you to give me a preview of what your objects will be. If you do do it, it would save some time, perhaps, if I just merely know. You indicated that as to certificates 14 and 15 of the Extension that you would object on the [891] ground that the summary was substituting work by the witness which the jury should do?

Mr. Emigh: That's true, we'll make that objection to any exhibit which we believe has that effect, and any exhibit that we think is not based upon a fair interpretation of the record we'll object to, and an exhibit which is not a reflection of the matters in record we may object to.

The Court: As to these that have been suggested, and again you're not required to anticipate at all, if you wish to, you may, if you're going to object to all of them, you may say if you wish. If you know that you're not going to object to some of them, you may say that if you wish, or you may

(Testimony of Elwood V. Denney.)

hold your peace in whole or in part as you choose.

Mr. Emigh: I believe that's going to have to be largely determined by the exhibits and the evidence. We haven't had an examination of all of them.

The Court: I may say this for the benefit of both sides, that when I try a case without a jury I frequently permit summaries to be put in evidence, not as a substitute for evidence, but it's been my general theory in trying cases that a jury shouldn't be given a harder task than a judge has, that ordinarily a jury should have the same aids that a judge has. I say ordinarily, because [892] there are times when the judge can have an aid which the jury can't have. Since the judge has to look at an exhibit, whether it's admitted or not, to decide whether it be admitted, the courts have had to adopt the synthetic idea that judges cannot be prejudiced by what they know but which are not admitted in evidence. The jury can't be allowed to see something until it's been ruled that it's not prejudicial, or at least it's not inadmissible. If summaries are admitted the jury will be told that the summaries are for the purpose of giving them an opportunity to understand the evidence, but that they're not bound or controlled by the summaries. I usually tell the jury that they're not even bound to look at the summaries. I wouldn't be if I were trying this case without a jury. I'd have the privilege of going to original sources if I chose. It's quite un-

(Testimony of Elwood V. Denney.)

likely that I would refuse to read the summary. Sometimes I've read summaries and have gone to the original sources and have disagreed with the one who made the summary, but I think you gentlemen have a fair summary of the idea I have as to summaries

Mr. Stocking: One thing, if the Court please; from something that the court said the other day in ruling on our offer in evidence of some of those bulky exhibits; it was my conclusion, and I thought that was the law also, that an expert witness is permitted to make a summary of [893] corporate records which have been brought into the courtroom and identified and are available for inspection.

The Court: Well, counsel, I might say that where a jury isn't obligated to use a summary is when the summary is of exhibits which are actually in evidence. It's not obligated to.

Mr. Stocking: I was thinking about the stock stubs.

The Court: Where one has examined a great mass of material, figures or documents, and where such documents cannot with practicality be examined and analyzed by a jury, an expert is permitted to testify, and the jury can give that amount of weight or no weight to the expert's testimony that the jury thinks he is entitled to receive, and if a cross-examiner wishes to put in evidence the original sources, ordinarily the court would not prevent the cross-examiner putting in such evidence.

(Testimony of Elwood V. Denney.)

I doubt very much that any good will come from putting in what would appear to me to be several thousand checks. We'll be recessed until 1:30.

(Whereupon, at 12:15 o'clock pm. the Court took a recess in this cause until 1:30 o'clock p.m.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [894]

Mr. Etter: If the Court please, during part of the cross-examination of one witness by the counsel for the defendant, an exhibit was marked "L", the same being an audit of the Independence Lead Mines Company prepared by Mr. L. J. Randall, certified public accountant of Wallace, Idaho. An objection was at that time made by counsel for the government, and since the offer of the exhibit the government and the defendant have stipulated that by the addition of certain figures that appear upon the first two sheets attached to the back of the Independence audit, plus another sheet which is marked with a red pencil, marked "copy" attached likewise to the back of the audit, that the exhibit may be admitted into evidence, with the idea in mind that consideration of the exhibit marked "L" shall be considered not only in the audit itself, but by reference and in view of the other three sheets which have been clipped thereto.

(Testimony of Elwood V. Denney.)

Mr. Stocking: That's agreeable; this is to avoid the witness Randall having to return.

The Court: Exhibit L as now supplemented is admitted in evidence by stipulation of the defense and the government.

(Whereupon, Defendant's Exhibit L for identification was admitted in evidence.)

The Court: You may proceed. [895]

(Whereupon, Audit report on Extension Company was marked Defendant's Exhibit T for identification.)

(Whereupon, Audit report on Pilot Company was marked Defendant's Exhibit U for identification.)

Mr. Etter: If it please the Court, it has likewise been stipulated between counsel for the government and counsel for the defendant that the defendant's identifications T and U may be by stipulation admitted into the evidence without further identification or proceedings to establish materiality or otherwise.

The Court: What are those exhibits?

Mr. Etter: Defendant's T being an audit report on the Lucky Friday Extension Mining Company, Wallace, Idaho, prepared by L. J. Randall, certified public accountant, Wallace, Idaho, and covering the time of May 28, 1945, to June 30, 1947. Defendant's Exhibit U is an audit report of the Pilot Silver

(Testimony of Elwood V. Denney.)

Lead Mines, Inc., Wallace, Idaho, prepared by L. J. Randall, a certified public accountant of Wallace, Idaho, and covering the period October 19, 1945, to June 30, 1947.

Mr. Stocking: That's agreeable.

The Court: Exhibits T and U by stipulation of both sides are admitted in evidence.

(Whereupon, Defendant's Exhibits T and U for identification were [896] admitted in evidence.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mr. Denney, with reference to your testimony regarding certificate number 15 of Lucky Friday Extension stock and the schedule you prepared to show certificates issued out of it, I'll hand you Plaintiff's Exhibit 114 for identification and ask you to identify it, please.

A. I prepared the original to this exhibit; in other words, this is a typewritten copy of my handwritten exhibit.

Q. And you checked it? A. I did.

Q. Now, what is shown on the far left side of Exhibit 114?

A. This exhibit shows sales by J. A. Allen—

Mr. Emigh: Just a minute. We will object. The exhibit is the best evidence when properly identified to go in. I ask that the answer be stricken.

(Testimony of Elwood V. Denney.)

The Court: Overruled. He may state it briefly enough to advise the court as to the composition of the exhibit.

Mr. Emigh: Exception.

Q. (By Mr. Stocking): Go ahead as you were.

A. This exhibit shows the sales by J. A. Allen of Extension stock transferred from certificate number 15, which was for 300,000 shares issued to Keane for legal services. The far left hand column over here shows that certificate [897] 1083 was originated by transfer from certificate—

The Court: Just a moment. I'm not permitting the witness to give the contents of the exhibit. You asked him as to what a certain column—

Q. Without designating the certificate number, just state what that far column shows, please.

Mr. Emigh: In view of the Court's statement now, we ask that the entire answer of the witness be stricken.

The Court: I'll strike it all, and you may proceed again. He may give a general statement of what the column shows.

A. The column shows a certificate transferred from certificate 15.

Mr. Stocking: We'll offer in evidence Plaintiff's 114.

Mr. Emigh: To which, may it please the Court, the defendant makes no objection if the purpose of the exhibit is confined to the establishment of a summary of the things which appear thereon, and

(Testimony of Elwood V. Denney.)

that the same be not considered for any purpose save and except to show a tracing of the origin, source and course and culmination of the particular stock as is there set forth. In other words, only as a summary of exhibits before the Court.

The Court: Satisfactory? [898]

Mr. Stocking: That's satisfactory.

Mr. Emigh: Just a minute; may I complete my statement?

Mr. Stocking: Yes.

Mr. Emigh: And that the defendant expressly reserves from this stipulation any exceptions he may have to the competency, relevancy or identification or otherwise made in the record as to the exhibits which purport to go to make up this summary or schedule.

The Court: Are you satisfied, Mr. Stocking?

Mr. Stocking: That I think is satisfactory, if the Court please.

The Court: Exhibit 114 admitted, no objection, the admission being for the purpose outlined by defense counsel.

(Whereupon, Plaintiff's Exhibit No. 114 for identification was admitted in evidence.)

(Whereupon, record of J. A. Allen account, Pennaluna Company, was marked Plaintiff's Exhibit No. 115 for identification.)

Q. (By Mr. Stocking): Mr. Denney, I'll hand you for identification what has been marked as

(Testimony of Elwood V. Denney.)

Plaintiff's proposed exhibit number 115, and ask if you can identify the records in that exhibit? I'll add to that question, as being some of the records which you examined during the course of your [899] investigation?

A. Yes, I examined these records in the course of my investigation, and used them.

Q. And where did you examine them?

A. I examined them at the office of Pennaluna & Company at Wallace.

Q. And what records are in that exhibit?

A. This card is the account of James A. Allen with Pennaluna and Company from August 4, 1947, to January 10, 1948. The checks are Pennaluna and Company checks payable to—

Mr. Emigh: Now just a minute—

A. ——Mr. Allen.

Mr. Emigh: We object to the witness stating what the exhibits are until they have been properly identified and admitted in evidence.

The Court: Well, that's a brief description for understanding. The objection is overruled.

Mr. Emigh: Exception.

Q. (By Mr. Stocking): What other material makes up that exhibit?

A. These confirmation statements are Pennaluna and Company confirmations to Mr. Allen, and the two large sheets are the so-called in and out record of Pennaluna and Company.

Q. Now, Mr. Denney, did you prepare a schedule

(Testimony of Elwood V. Denney.)  
as to the stock—as to certain stock certificates transferred from [900] certificate 14 of Extension stock?

A. Yes.

(Whereupon, schedule of sales by Allen of Extension stock from certificate 14 was marked Plaintiff's Exhibit No. 116 for identification.)

Q. I hand you Plaintiff's 116 for identification and ask you what that is?

A. This is the typewritten copy of a schedule prepared by me which I checked, which shows sales by James A. Allen—

Mr. Emigh: Now just a minute—

The Court: Overruled.

Mr. Emigh: —to which the defendant objects on the grounds and for the reason that this is not a proper way to identify an exhibit, by putting in the contents of the exhibit and asking if it's true.

Mr. Stocking: This is the heading.

Mr. Emigh: The proper foundation has not been laid, and that the testimony invades the province of the jury in determining what the exhibit constitutes.

The Court: I'm inclined to think counsel is right as to exhibit 116. I think it should be very much—well—

Mr. Stocking: I didn't quite hear the last.

The Court: I'll strike his answer. The jury will disregard it. The identification should be shorter and I should know where it came from first. [901]

(Testimony of Elwood V. Denney.)

Mr. Stocking: I think he testified it was prepared from his schedule, typed, and checked by him.

The Court: Yes, but from where?

Q. (By Mr. Stocking): From what sources did you prepare the information which appears on that exhibit?

A. The information as to the issuance of the stock certificates came from the records of Lucky Friday Extension, and the information as to the sales, the purchases by the brokers, came from the records of the brokers.

Q. What brokers were those?

A. There are three brokers; E. J. Gibson & Company, Pennaluna & Company, and Standard Securities Corporation.

Q. And does that purport to indicate transfers from certificate 14? A. Yes.

Mr. Stocking: We'll offer this exhibit 116.

Mr. Emigh: May we inquire briefly, your Honor?

The Court. Surely.

#### Voir Dire Examination

By Mr. Emigh:

Q. The exhibit 116 which you refer to in part you identified as being taken from records disclosed on Plaintiff's Exhibit 115, is that true?

A. Yes.

Q. And that has not yet been admitted in evidence, is that correct? [902] A. Yes.

Mr. Emigh: Well, I think we're going to object at this stage on the ground and for the reason that

(Testimony of Elwood V. Denney.)

the tabulation is not wholly based upon matter of record in this case, incompetent, irrelevant and immaterial, and not properly identified, and incompetent for any purpose, not the best evidence.

Mr. Stocking: The records have been identified as the records that he used of Pennaluna and Company in making his investigation and in connection with his tracing of the stock certificates.

Mr. Emigh: We submit the rule in the Federal court is that they must not only be identified, but if required on objection, must be placed in evidence.

The Court: You say you submit that's according to the law of the Federal court. Can you cite me a recognized case to that effect?

Mr. Emigh: I believe so, if you'll give us some time, if I didn't leave them at the room.

The Court: Well, I'll take under reservation and ruling the exhibit 116. You may proceed.

Mr. Emigh: The two cases, may it please the Court, we refer to are Leavy vs. United States, Circuit Court of Appeals, Ninth Circuit, 92 F. 2d 688, certiorari denied, and another one is Pochet vs. U. S., a Minnesota case, [903] which I think would be in the Seventh Circuit, 68 F. 2d 205.

The Court: I'd like to see 92 F. 2d. You may proceed, counsel.

(Whereupon, schedule of sales by Allen of Pilot stock from certificates 13 and 14 was marked Plaintiff's Exhibit No. 117 for identification.)

(Testimony of Elwood V. Denney.) .

The Court: I take it that you're referring to that portion of the syllabus numbered 12, and the accompanying part of the text?

Mr. Emigh: I can't remember the number, your Honor, but it's pertinent to this point.

The Court: Well, I don't find in this case, counsel, what I think you are suggesting. The syllabus reads as follows: "12. Testimony of accountant who used summaries which he had made of records of corporation was properly admitted where the records themselves were actually introduced in evidence." The court says this: "Such evidence was admissible" citing cases; "The books of account from which the summaries were made were not available for cross-examination. Such is not the case here. Actually, the books were introduced in evidence." The court doesn't say that necessarily the books were introduced in evidence. The court says that in a case where the books of account were not available for cross-examination [904] that a certain rule might hold.

Mr. Emigh: As I understand it, the law is that the summary must be a summary of the evidence, made for the convenience of the witnesses, and something that's not in evidence is not a summary of the evidence.

The Court: Well, counsel, I asked for an authoritative decision.

Mr. Emigh: I believe that is.

The Court: I don't think so, counsel. The point

(Testimony of Elwood V. Denney.)

in this case is that the summary is admissible, in effect, where the books from which the summary was made are available for cross-examination. The court goes further and says that actually the books were introduced in evidence, but it doesn't say necessarily they were introduced in evidence. Now, if you're objecting because exhibit 115 for identification has not been admitted, I'll reserve ruling and see what happens as to that. It may be that your objection will be cured, and it is not necessary to determine an academic question.

Mr. Emigh: I understand then it's not in evidence?

The Court: 115 is not in evidence; 116 I've reserved ruling. However, I'm advising counsel that I am yet to be presented with an authoritative case from the Ninth Circuit which holds that the books must be more than available. [905]

Mr. Emigh: In other words, if we have authority we had better produce them, your Honor?

The Court: Yes.

Mr. Emigh: We'll try to get some.

The Court: All right. The case you've submitted doesn't disagree with what you've said; it's just a little lesser point.

Mr. Emigh: We might be placing too much confidence in the text writer.

The Court: Yes, that may be.

(Testimony of Elwood V. Denney.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mr. Denney, handing you Plaintiff's proposed exhibit 117, can you identify it with respect to the disposition of certain certificates from certificate number 13 of Pilot Silver Lead?

A. Yes.

Q. And did you prepare this exhibit?

A. I prepared the handwritten original from which that was copied.

Q. And did you check this with your original?

A. I did.

Q. And does this purport to indicate the issuance of certain certificates from certificate 13?

A. Yes.

Q. That is of Pilot Silver Lead. [906]

Mr. Emigh: May we have just a moment here?

The Court: Yes.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Deney, in preparing the schedule, Plaintiff's Exhibit No. 117 for identification, did you use only records which have now been introduced in evidence in this case?

A. I used only the records of Pilot Silver Lead and the records of the brokers named hereon.

Q. Will you answer my question, please?

A. And the stock certificates of Pilot, if I re-

(Testimony of Elwood V. Denney.)

member correctly, have not been admitted, is that true?

Mr. Stocking: I don't think any stock stubs or certificates other than small groups of them have been admitted; they've all been identified and offered.

A. On the schedule appears two items—

Mr. Stocking: Three, isn't it?

A. —three items, purchases by Pennaluna and Company from Mr. Allen, which have not—Pennaluna's records have not been admitted.

Mr. Stocking: Have those records been identified?

The Court: Just a moment; let Mr. Emigh conduct the voir dire.

Q. (By Mr. Emigh): I'll ask another question which may clear our position on this: What I'm getting at is, if the jury went to the same trouble you did and examined the [907] exhibits in this case actually introduced in evidence, they wouldn't have sufficient records before them to make the same sort of a summary, would they?

A. You used the word introduced; do you mean admitted?

Q. Introduced is one which is admitted, not identified for admission.

A. No, some of the records of Pennaluna have not been admitted.

Mr. Emigh: Well, we aren't doing this just to take time. It's possible by a short conference here

(Testimony of Elwood V. Denney.)

with Mr. Stocking and with my client and with Mr. Etter we can get past this objection, and save the court some time. We don't want to just make objections.

The Court: All right; it may be that some of the objections if made will be taken care of by later developments, but if you can agree, so be it.

Mr. Emigh: My procedure now is taking a lot of the Court's time and our time that we can possibly avoid.

The Court: Exhibit 117 has not yet been offered, has it?

Mr. Stocking: I think I did offer it.

The Court: Exhibit 117 is now offered, is that it?

Mr. Stocking: It's now offered.

Mr. Emigh: At this point I was inquiring, I will object on the ground and for the reason that the evidence [908] affirmatively shows that the document which is marked Plaintiff's Exhibit 117 for identification purports to be a summary of the evidence in this case for the aid of the jury, and it affirmatively appears from the testimony that the jury couldn't scrutinize the evidence and reach this conclusion. It's incompetent, irrelevant and immaterial, and a proper foundation has not been laid.

The Court: All right; ruling reserved.

Mr. Stocking: I'll ask a question to clear up one point.

(Testimony of Elwood V. Denney.)

Direct Examination

(Continued)

By Mr. Stocking:

Q. Mr. Denney, in connection with the documents which were necessary for the preparation of Exhibit 117, are all of those documents—have all of those documents been identified here?

A. Yes.

Q. Now, Mr. Denney, did you in your investigation determine from the records of the brokers the source of the J. T. Halin stock which he testified yesterday he purchased from Mr. Keane and Mr. Allen? A. Yes.

Mr. Emigh: Just a minute; you're just asking about the source?

Mr. Stocking: Yes, and—

The Court: Just a moment; read that question, please.

(Whereupon, the reporter read the last previous question.)

The Court: Which stock was that?

Mr. Stocking: J. T. Halin testified yesterday he purchased 275,000 shares of stock from Mr.—

The Court: At what price?

Mr. Stocking: He said 10 cents a share for 200,000 shares, and 24½ cents a share for 75,000 shares.

The Court: Well, just a moment. My recollection is that Mr. Halin testified that he purchased 200,000 shares at 10 cents a share from Mr. Keane—

(Testimony of Elwood V. Denney.)

Mr. Etter: Correct.

Mr. Stocking: That's what I said.

The Court: ——that he made a check for \$13,000, \$7,000 in cash, and he did make a statement that Mr. Allen, as I remember it, at the Davenport Hotel had a connection with the delivery of the stock and the receipt of the money and check.

Mr. Stocking: My reference meant that stock from Mr. Keane and the 75,000 shares from Mr. Allen.

The Court: Well, you had better divide the question, because Mr. Halin stated that the purchase was from Mr. Keane, and he then detailed such connection if any as he said Mr. Allen had with that 200,000 shares. [910]

Mr. Stocking: Yes.

Q. (By Mr. Stocking): I'm referring now to the 200,000 shares Mr. Halin testified he purchased from Mr. Keane, and the 75,000 shares Mr. Halin testified he purchased from Mr. Allen. Did you determine the source of that stock by tracing it?

A. Yes.

Q. And from what certificates did that stock originate?

Mr. Emigh: Now just a moment; to which we object, as it doesn't appear that the witness is testifying from matters of record in this court or matters that have been offered in this court; he's testifying from a summary of some investigation

(Testimony of Elwood V. Denney.)

he made, and it's hearsay as to Allen, secondary evidence, incompetent, irrelevant and immaterial and not the best evidence.

The Court: Is the support for this investigation admitted in evidence?

Mr. Stocking: I'll confine my question then to that stock which was sold by Mr. Halin to Standard Securities Company, Pennaluna and Company, E. J. Gibson and Company, Preston and Raef; I think that covers all of them.

Mr. Emigh: We'll ask that before the witness answers the question, we have one preliminary question.

The Court: Well, maybe we can find out first from [911] Mr. Stocking. Is your question based upon evidence now admitted?

Mr. Stocking: Yes, confined to those four brokers it's based on evidence now admitted with the exception I believe of some of these in and out records which were merely offered for identification.

The Court: Well, it's based on evidence either admitted or—

Mr. Stocking: Or identified, yes.

The Court: In any event, in the courtroom?

Mr. Stocking: Yes.

The Court: Now you may ask the question, counsel, if you want.

Mr. Stocking: Now, Mr. Denney—

The Court: I'm speaking to Mr. Emigh. He is not bound by the question I asked Mr. Stocking.

(Testimony of Elwood V. Denney.)

Mr. Emigh: No, but I wonder what the state of the record is? Are you offering this?

Mr. Stocking: I'm asking some questions; I'm not going to offer any schedule on this one, because the schedules show the prices at which the stock was sold out by Mr. Halin, and I don't believe that's material. I think the source of the certificates are material.

The Court: All right, you may proceed.

Mr. Stocking: Did you want to ask a preliminary [912] question now, Mr. Emigh?

Mr. Emigh: Go ahead and ask your question.

Mr. Stocking: I think I did.

Mr. Emigh: May I have the question?

Mr. Stocking: I'll ask it again, though.

Q. Can you state from what certificates the stock sold by Mr. Halin through the brokers which I have just named, and I'm referring to the Extension stock concerning which Mr. Halin testified yesterday, what certificates did that stock come from?

Mr. Emigh: To which we object on the ground and for the reason that it manifestly appears from the question of counsel that the witness will base his answer of necessity on records not introduced in evidence, and would draw his conclusions from such records, and manifestly the jury could not reach the same conclusion by examining the records and evidence in this case; incompetent, irrelevant and immaterial, and the proper foundation has not been laid.

(Testimony of Elwood V. Denney.)

Mr. Stocking: I'll ask one more question.

Q. Mr. Denney, are the records upon which you can base your conclusions, have all of those records been identified here? A. Yes.

Q. Now, will you answer the question? [913]

Mr. Emigh: We renew the objection.

The Court: Just a moment, counsel. Previously during the trial of the case I did suggest that some large masses of testimony might not yet be admitted because they were masses. Objection is now made in effect that such identification exhibits are not in evidence. Is there any reason that the Court should have to rule on that point? In other words, I'm not preventing the government from re-offering substantial exhibits which ordinarily take space. I'm going to reserve ruling as to the answer to this question.

Mr. Stocking: If I understand the court correctly, then, we are in a position where we should re-offer these particular exhibits which have been merely identified here as proposed exhibits, and at this time, then, I'll——

Mr. Emigh: I suggested a moment ago, and I re-suggest, that I think if we could go into a huddle here and see what everybody's driving at, we could save some time.

The Court: How much of a huddle would you like?

Mr. Emigh: I think 10 minutes, or 5, or 7.

(Testimony of Elwood V. Denney.)

The Court: You may have ten minutes. The jury will be excused. The Judge will be excused.

(Short recess.)

(Whereupon, the following proceedings were had without [914] the presence of the jury and one alternate juror.)

The Court: If you gentlemen need more time we'll be at ease.

Mr. Emigh: We thought we might streamline this and admit that stock was issued in somebody's name, and after one transfer, three transfers, five transfers, it got into somebody's name who is involved in this case, but I'm not so sure we can do that now.

The Court: Well, of course the government can offer in evidence all of these various documents and papers.

Mr. Emigh: There's very few that aren't in evidence.

Mr. Stocking: Well, all of the stock stubs and the stock certificates themselves, they've been merely identified, a number of these in and out records have merely been identified, and I just hesitate to put all of them in evidence, and of course we aren't assuming that the Court would let them in anyway. That was one of the reasons we had the schedules prepared, to eliminate all that.

Mr. Emigh: Mr. Denney, can you start out from

(Testimony of Elwood V. Denney.)

the exhibits in evidence and trace through to the ultimate—

The Court: Well, I think we might as well call the jury back. You may bring in the jury. The government may [915] proceed.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: You may proceed, Mr. Stocking.

Mr. Emigh: May it please the Court, pardon me for interrupting; we just made a decision that we think we can protect our client's interest by a more expeditious procedure in relation to the exhibits which have been identified and those which have been admitted, and where the source and course of these stocks may be traced through exhibits which have been identified and are here available and have not been admitted, we are going to open the door and assume that that is proper.

The Court: You're withdrawing your objections?

Mr. Emigh: As to the exhibits not being in evidence, provided they have been identified.

The Court: And are here.

Mr. Emigh: And are available for examination if we so wish.

The Court: But the defendant is not withdrawing his objection as to records and documents which are outside the courtroom and have not been identified?

(Testimony of Elwood V. Denney.)

Mr. Emigh: That is right.

The Court: All right, you may proceed.

Mr. Stocking: Before we go any farther with this [916] line, I wanted to mention in connection with Exhibit 117, which I referred to as tracing certificates from Pilot certificate 13, it should have also included Pilot certificate 14.

Q. (By Mr. Stocking): Now, Mr. Denney, you've already testified that you can trace the Halin certificates through the brokers, which I have identified, by means of records which have been identified and are here in court, is that correct?

A. It is.

Q. And now will you tell us the certificate numbers which were the source of the Halin certificates?

A. Mr. Halin got—

Q. Eliminating those that were sold through L. E. Nichols & Company, a small amount, and I think other Nichols company.

A. Mr. Halin got stock from certificate number 15 for 300,000 shares issued to Mr. Keane for legal services. He also got stock which was originally certificate number 16 for 200,000 shares issued to Elmer Johnston for legal services.

Q. And in connection with those, were there any other sources of this stock, any other certificates?

A. Mr. Halin got shares from certificate number 14 issued to J. V. Grismer for mining claims and real estate.

Q. Did you total up the total number of shares

(Testimony of Elwood V. Denney.)

which you have [917] traced from certificate 14 through Mr. Halin's account?

A. Yes. Mr. Halin sold through brokers E. J. Gibson and Company only 40,000 shares, and deposited with Gibson an additional 20,000 shares which were not sold.

Q. And as to certificate 15?

A. Certificate number 15 shows sales by Mr. Halin through Standard Securities, Pennaluna, Gibson, Preston & Raef, of 107,500 shares.

Q. Now as to certificate number 16?

A. Out of certificate number 16 for 200,000 shares issued to Elmer Johnston for legal services, Mr. Halin sold 98,000 shares through Preston & Raef, Gibson, Standard Securities.

Q. And now the testimony by Mr. Johnston shows that his certificate number 16 had been broken up into eight certificates. Do you have in mind those certificate numbers?

A. Yes, they were certificate numbers 19 through 26.

Q. For how many shares apiece?

A. 50,000 shares.

Q. And the testimony also shows through Mr. Johnston that five certificates, 22, 23, 24, 25 and 26, were turned back by him to Mr. Keane or Mr. Allen. What have you to say as to the Halin shares, what was the source of the Halin shares with reference to those five certificates, and referring to the shares

(Testimony of Elwood V. Denney.)

which you have just stated came out of certificate 16? [918]

A. Mr. Halin sold 98,000 shares out of those certificates.

Q. Out of those Johnston certificates?

A. Yes, the breakdown of the Johnston certificates.

Q. Now, Mr. Denney, did you make an examination of the records of the Montana Leasing Company and the Lexington Silver Mines, Inc., its successor? A. Yes.

Q. What records were available for examination?

A. I had the bank statements together with the cancelled checks and some of the duplicate deposit slips; a bunch of duplicate deposit slips were given to me but it proved to be incomplete, in that there were more deposits on the bank statements than in the bunch.

Q. And these records that you have just mentioned are identified as Plaintiff's 9-a—

A. Yes.

Q. —the deposit slips of the Montana Leasing.

The Clerk: That's Exhibit 9-a.

The Court: Is it admitted?

The Clerk: Yes.

Q. And Plaintiff's for identification 8 in the folder 8, marked 8-a to 8-o, are these the bank deposits or a portion of the bank records which were turned over to you? A. Yes. [919]

(Testimony of Elwood V. Denney.)

(Whereupon, summary of deposits in bank account of Montana Leasing and Lexington was marked Plaintiff's Exhibit No. 118 for identification.)

(Whereupon, summary of bank balances in account of Montana Leasing was marked Plaintiff's Exhibit No. 119 for identification.)

Q. (By Mr. Stocking): Did you prepare a summary of the deposits made into Montana Leasing Company and its successor, Lexington Silver Mines, Inc., bank account at the Idaho First National Bank at Wallace, Idaho? A. Yes.

Q. Showing the source of funds when that notation appeared on the deposit slip? A. Yes.

Q. And where no notation appeared on the deposit slip, but the item appeared in the bank statements, leaving the source of funds blank?

A. Yes.

Q. I have misplaced the original, but I'll hand you Plaintiff's 118 for identification and ask you if you can identify that?

A. This is a record by months beginning July 1, 1945, through August, 1946, of deposits of funds into the bank account, its bank account at the Idaho First National, Wallace.

Q. And by "its bank account" you're referring both to the [920] Montana Leasing Company and its successor, Lexington Silver Lead Mines, Inc.?

A. Yes.

(Testimony of Elwood V. Denney.)

Q. Did you also prepare a summary showing the bank balance at specific dates on which funds were deposited in Montana Leasing Company from or by Lucky Friday Extension Mining Company or Pilot Silver Lead Mines, Inc.? A. Yes.

Q. Can you identify Plaintiff's Exhibit 119 as the schedule to which I've just referred?

A. This is a schedule showing balances in the Montana Leasing Company account at the Idaho First National Bank both with funds on hand and overdrafts. The overdrafts appear in red; from July 25, 1945, through May 16, 1946, into which funds of the Lucky Friday Extension were deposited to increase these balances. Also is a like schedule for Montana Leasing Company in that bank account showing the balances on hand and overdrafts in red, and deposits into the account from funds of Pilot Silver Lead.

Q. Now, at how many times during the period covered by Plaintiff's 119 for identification did you discover that deposits were made at the times there were overdrafts in the bank?

Mr. Emigh: Just a minute; to which evidence offered by the government the defendant objects, and objects to [921] the conclusions of the witness, on the grounds and for the reason that the government proved by the witness Keane that where the overdrafts appeared on the record, in truth and fact they were not overdrafts, on account of arrangements made with the bank, that they were

(Testimony of Elwood V. Denney.)

just merely in the nature I believe of loans, that they had made arrangements with the bank.

The Court: Overruled.

Mr. Emigh: So that these did not constitute overdrafts.

Q. (By Mr. Stocking): How many times?

Mr. Emigh: And that this would be going beyond the record in this case, to state his conclusions that they were overdrafts.

The Court: It will be for the jury to determine whether they were overdrafts or not. The witness may answer. Objection overruled.

Mr. Emigh: Exception.

A. (Witness): There were twenty deposits made out of Lucky Friday Extension funds and Pilot funds when there were overdrafts in the Montana Leasing bank account.

Q. And how many times were deposits made when the bank balance was at an amount less than \$1,000?

A. There were seventeen deposits made out of Lucky Friday Extension and Pilot funds when the Montana Leasing bank [922] account showed a balance of less than \$1,000.

Q. From the bank statements contained in Exhibit 8 for identification how did you determine whether or not there appeared to be overdrafts on any particular date?

A. It shows on the bank statement, also in red, when there were overdrafts in the balance column.

(Testimony of Elwood V. Denney.)

Q. And that's a customary practice of banks?

A. Yes.

Q. Now, did you prepare from the Montana Leasing and Lexington Silver Mines company records contained in exhibit 8 for identification and the other exhibits in that folder to which I have just referred, a list of the checks signed by the defendant Allen during the period covering July, 1945, through August, 1946, giving the amount, the name of the payee, and the total amounts by months, and final grand total? A. Yes.

(Whereupon, schedule of checks signed by Allen on Montana Leasing Bank account was marked Plaintiff's Exhibit No. 120 for identification.)

Q. And I'll hand you Plaintiff's 120 for identification, and ask if you can identify that?

A. 120 is a schedule of checks.

Q. Is that the schedule to which I've just referred?

A. Yes, this is the schedule to which you just referred, and [923] is a copy of my handwritten schedule, checked by me, which consists of a list of checks in date order signed by Mr. J. A. Allen.

Q. And those were the checks which were contained in these exhibits 8-a to 8-o inclusive?

A. They are.

Q. That portion of those checks, I should say, which contain Mr. Allen's signature?

(Testimony of Elwood V. Denney.)

A. Yes, the checks listed on the schedule may be found with these cancelled checks.

Mr. Stocking: I now offer 118, 119 and 120.

Voir Dire Examination

By Mr. Emigh:

Q. Mr. Denney, as to Exhibit 118, does the matter contained in that exhibit entirely appear on the records offered or introduced in evidence in this case and which are now available in court?

A. The information in number 118 will be found on—

Q. Just answer yes or no, is all that's necessary. It's all in court?

A. It's in court.

The Court: Admitted or identified?

A. It has been identified, as I understand it, or has it been admitted?

Mr. Stocking: Yes, it has been identified.

Mr. Emigh: The defendant does not object to the [924] exhibit 118, except that defendant reserves all objections heretofore made to any part or portion of the record which constituted a source from which the compilation, Plaintiff's 118, was taken, all of which said objections are reserved at this time.

The Court: But you're not objecting to 118 because the sources are not in evidence?

Mr. Emigh: That's right.

The Court: Exhibit 118 admitted, no objection

(Testimony of Elwood V. Denney.)

to 118. The defendant is not waiving objections made to other exhibits.

(Whereupon, Plaintiff's Exhibit No. 118 for identification was admitted in evidence.)

Q. (By Mr. Emigh): Mr. Denney, as to Plaintiff's Exhibit 119 I'll let you examine that and state whether or not you have already testified on your direct examination as to the contents of that record? A. Yes.

Mr. Emigh: We now object to Plaintiff's Exhibit 119 on the grounds and for the reason that the offering of said exhibit in evidence is repetitious and an attempt to duplicate the testimony on it. Counsel for the government has already elected upon identification of that to enter the contents of that exhibit in the record, and we further reserve the objections, if any, we have taken to [925] the various exhibits which formed the source or sources of the exhibit 119.

The Court: I understand you're not objecting upon the ground that some portion of the sources have only been identified, and not admitted?

Mr. Emigh: That's correct.

The Court: Exhibit 119 is admitted.

Mr. Emigh: May we have an exception.

The Court: Objection overruled.

(Whereupon, Plaintiff's Exhibit No. 119 for identification was admitted in evidence.)

The Court: I might explain this to the jury,

(Testimony of Elwood V. Denney.)

that if there is a summary presented of exhibits which are already in evidence, the jury is privileged to go to the exhibits themselves and make their own summary. The jury is not required to take advantage of a saving of time. If the jury does not wish to use such assistance as the summary is to saving time, the jury is not required to use it. The jury can go through the exhibits themselves, but the exhibit 119 is admitted for such assistance if any as the jury wishes to make of it. You may proceed.

Mr. Stocking: As I understand it, the Court is not indicating that all of the underlying exhibits in these three are actually admitted in evidence?

The Court: Well, I have advised the jury only that [926] where the exhibits themselves are in evidence, that the jury can go through the mass of exhibits instead of using the summary, or they can use the summary to check the exhibits. I think I made myself clear to the jury.

Q. (By Mr. Emigh): As to Plaintiff's Exhibit 120, will you state whether or not all of the sources of the various items purported to be shown on that exhibit are in evidence or identified for introduction in evidence, and present in the court?

A. They are.

Mr. Emigh: Objected to, may it please the Court, on the grounds and for the reason that the same is incompetent, irrelevant and immaterial for any purpose in this case, as it doesn't prove or tend to prove a diversion of funds from either of

(Testimony of Elwood V. Denney.)  
the companies, and it's immaterial what disposition occurred to those funds after the same were diverted, and further, in connection with this, we reserve any objections heretofore made to the sources from which said schedule was prepared.

The Court: This objection is not based upon the ground that the sources or some of them have only been identified and not admitted?

Mr. Emigh: That's right.

The Court: Objection overruled.

Mr. Emigh: Exception, please. [927]

The Court: Exhibit 120 admitted.

(Whereupon, Plaintiff's Exhibit No. 120 for identification was admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Exhibits 118, 119 and 120 to the jury.)

Direct Examination  
(Continued)

By Mr. Stocking:

Q. Mr. Denney, are you familiar with the civil action in the District Court of the United States for the Western District of Washington, Northern Division, in civil action No. 714, which is identified further by this document? A. Yes.

(Whereupon, certified copy judgment in case No. 714 was marked Plaintiff's Exhibit No. 121 for identification.)

(Testimony of Elwood V. Denney.)

Q. And did you make an investigation in connection with that civil action?

A. Yes, I was in on the investigation of this matter.

Q. And do you know the defendant who is named in this action as James A. Allen? A. Yes.

Q. Is that the same James A. Allen as the defendant in this present proceeding? A. Yes.

Mr. Stocking: We'll offer in evidence the certified copy of the judgment of the Western District of [928] Washington, Northern Division.

Mr. Emigh: No objection.

The Court: Exhibit 121 admitted. Let me see it, please.

(Whereupon, Plaintiff's Exhibit No. 121 for identification was admitted in evidence.)

(Whereupon, Mr. Stocking read portions of Plaintiff's Exhibit 121 to the jury.)

Mr. Stocking: At this time I'd like to re-offer 116 and 117 which were the subject of some discussion and I believe the court took them under advisement.

The Court: How about 116 and 117?

Mr. Emigh: Have you got a copy of these?

The Court: Is there objection to exhibits 116 and 117?

Mr. Emigh: With the understanding we're to be furnished copies of them so we can make an examination of them—

(Testimony of Elwood V. Denney.)

The Court: It is my understanding that at least one of those exhibits in part is based upon records that is not identified or admitted.

Mr. Stocking: Just a moment, here; no—

The Court: It is my recollection that Mr. Denney made mention of some brokers' records.

Mr. Stocking: He was referring to the records which [929] were identified as exhibit 115, as not having been admitted.

Mr. Emigh: I think the Court reserved the ruling on 116 for the reason it was based in part on exhibits identified but not admitted in evidence, if I am not mistaken. Now, in that regard, if that is correct and if those exhibits are identified and in court, why, that objection would be withdrawn. I'm not sure whether that is the state of facts or not.

The Court: I reserved ruling; I didn't reject the exhibits, I just reserved ruling?

Mr. Emigh: I think that is true.

Q. (By Mr. Stocking): Will you look at those and tell us whether or not 116 and 117 are based on records which have been identified here in court as exhibits? A. Yes, they are.

The Court: They're based on records identified; there's no objection on that ground.

Mr. Emigh: Your Honor, as to the exhibit 116, the defendant has no objections except that the defendant does not waive any objections heretofore made as to the separate exhibits or any thereof

(Testimony of Elwood V. Denney.)  
forming a source of the information purported to be  
set forth in this schedule.

The Court: Exhibit 116 is admitted; there's no  
objection. The defendant does not waive other  
objections. [930]

Mr. Emigh: The same statement as to 117.

The Court: Exhibit 117 is admitted. There's no  
objection to it. The defendant does not waive  
objections to other exhibits.

(Whereupon, Plaintiff's Exhibits Nos. 116  
and 117 for identification were admitted in  
evidence.)

\* \* \*

[931]

(Short recess.)

(All parties present as before, and the trial  
was resumed.)

Mr. Stocking: I want to make a brief reference  
to these last two exhibits.

The Court: All right.

(Whereupon, Mr. Stocking read portions of  
Plaintiff's Exhibits 116 and 117 to the jury.)

The Court: You may proceed with cross-examination.

#### Cross-Examination

By Mr. Emigh:

Q. Mr. Denney, I think in your direct examination  
and to qualify yourself for the purpose of  
testifying as to summaries of records here you gave  
us an outline that you were an accountant?

(Testimony of Elwood V. Denney.)

A. Yes, sir.

Q. A certified public accountant, or just an accountant?

A. A licensed public accountant.

Q. Sir?

A. A licensed public accountant in the State of Washington.

Q. And you had had some bank experience?

A. I have.

Q. A number of years in a bank?

A. Seven.

Q. What were your duties in the bank generally, just roughly?

A. I was in the Seattle Branch of the Bank of California, a comparatively small bank at that time, and performed duties in practically all departments during the seven years.

Q. And that's true in those small institutions, a man generally works all over the place?

A. That's right.

Q. And you became quite familiar with handwriting at that time?

A. I beg your pardon?

Q. You became quite familiar with handwriting? A. Yes.

Q. And since then as an investigator for the Securities and Exchange Commission you have made it one of your duties to examine handwriting and examine the genuineness of it, haven't you?

A. Well, incidentally, I'll say.

(Testimony of Elwood V. Denney.)

Q. What's that?

A. Incidentally, is all.

Q. Yes, it's one of the things; you're very frequently encountered with documents which you're not sure are [933] genuine, and for that purpose you've made a study of how to determine whether a signature is or is not genuine, when you have a genuine signature?

A. I have not made a study of it. I acquired a little experience through my work, is all, and at times in an amateurish way I have made comparisons. I don't profess to be any expert.

Q. You testified on direct examination something about an examination of the Independence; that's the Independence Lead Mines Company, I believe?

A. Yes, sir.

Q. Yes. Now, there's an exhibit, Plaintiff's Exhibit 95. I'll ask you if that was a document that came into your possession as a record of the Independence? A. Yes.

Q. And I'll hand you Defendant's Exhibit M, and ask you if that came into your possession in the same manner as the other?

A. No, it didn't.

Q. And Defendant's Exhibit M came into your possession some time later than Plaintiff's Exhibit 95, is that correct?

A. Would you let me have that question again?

(Whereupon, the reporter read the last previous question.)

(Testimony of Elwood V. Denney.)

A. I hadn't seen M before it was presented in this court. [934]

Q. M?

A. Yes. This is the copy which was put in evidence during the administrative hearings before the Securities and Exchange Commission.

Q. You didn't have possession of Defendant's Exhibit M? A. I don't recall it.

Q. Did you ever see it?

A. I don't recall seeing it before it appeared in this courtroom.

Q. At no time? A. No.

Q. Did you make any study to determine the genuineness of a signature on one of these exhibits?

A. Why, it wasn't necessary, because this copy was handed to us during the administrative hearing by Mr. Keane. It was without signatures on it. It was blank, and he in our presence at the hearing wrote the names in which he said appeared on the original copy.

Q. At that time you didn't know about the original copy, is that right?

A. Mr. Keane said that there was an original copy, as I remember it.

Q. And when did he first tell you that?

A. I don't recall that.

Q. Well, was it before this hearing when he testified as to [935] the Plaintiff's Exhibit 95?

A. I don't recall that. One reason is that I personally placed little importance upon that note—

(Testimony of Elwood V. Denney.)

Q. Yes?

A. ——and I had given it no thought further for quite some time, until the matter was brought up by the defendant in this courtroom.

Q. Did you ever discuss this note with the defendant Allen?

A. Yes, Allen was told about the note.

Q. Yes, and you discussed it with him?

A. Yes, I talked with Mr.—

Q. When was that?

A. That was I believe shortly after Mr. Keane presented it in evidence; was that March, 1945?

Q. Mr. Keane— A. Yes.

Q. ——presented it in evidence in what case?

A. Presented the duplicate, the copy, at the administrative hearing during the investigation.

Q. Well, then, you discussed the original after that; after Mr. Keane placed the copy in evidence before the S.E.C. on March 19, 1947, you discussed the original with Mr. Keane, didn't you?

A. Yes, I remember having some conversation with Mr. Allen—

Q. Now, at that time— [936]

A. —about this note.

Q. And at that time you knew about the signature on the note, didn't you?

A. Mr. Allen, as I recall it, was told by me that Mr. Keane had written his name on the note at the administrative hearing.

Q. Had written Allen's name? A. Yes.

(Testimony of Elwood V. Denney.)

Q. Is that the extent of your conversation with Mr. Allen, Mr. Denney?

A. Well, I know I recall very definitely at the time that Mr. Allen was incensed about it, and accused Mr. Keane of forging his name.

Q. Yes. Now, when you do encounter a signature which you do not think is genuine, what steps do you take to determine whether it's genuine or not?

A. I placed no importance on it at all.

Q. You're not answering my question. When you encounter a signature which you do not think is genuine, what steps do you take to determine whether it is genuine or not?

A. Well, I haven't had occasion to do that.

Q. Have you any small instrument or anything that you use to determine the slope of letters or anything of that kind? A. I have not.

Q. Have you anything which you use to measure? [937] A. I have not.

Q. Have you a nail file that you carry around with you? A. No, sir.

Q. Have you nothing of that kind at all?

A. No, sir.

Q. Did you ever discuss with Mr. Allen before the trial of this case at any time this signature, and the fact that Mr. Allen didn't put periods in his signatures, and this signature had periods in it?

A. I traced Mr. Allen's name on that copy of the note with something, I don't know what it was,

(Testimony of Elwood V. Denney.)  
at the time, and showed it to him, I believe. Now,  
this is hazy in my mind.

Q. All we want is your recollection.

A. Because I didn't place any particular im-  
portance on it, so it's hazy in my mind.

Q. Now, the fact is, to refresh your memory  
from our discussion, I'll again hand you Plaintiff's  
Exhibit—or Defendant's Exhibit, I beg your par-  
don, M for identification, and ask you to take a good  
look at that signature.

The Clerk: You said M for identification. It's  
been admitted.

Q. Yes, Defendant's Exhibit M, admitted; take  
a good look at that signature and state if it isn't  
a fact that you made a number of tracings of that  
signature and compared them [938] with Mr.  
Allen's genuine signature, and afterwards showed  
your tracings and the genuine signature to Mr.  
Allen, and also showed him or referred to this  
original note?

A. I recall tracings of a signature. Now, I don't  
recall if it was this signature or not. I know I dis-  
cussed with Mr. Allen his signature. Now, if I am  
in error it's from lack of memory, because we didn't  
place any particular importance upon this thing.

Q. But you realize Mr. Allen might place quite  
a bit of importance on a \$60,000 note signed by  
somebody else with his name? A. Yes.

Q. That might not appear important to you in

(Testimony of Elwood V. Denney.)

your investigation, but you can understand why it would be important to him, can't you?

A. Sure; sure.

Q. Now, your recollection is that you did trace a name on a note?

A. I recall a tracing and showing it and talking with Mr. Allen, now that you refresh my memory, but I don't know if it was traced off the original or not. Now, I don't recall.

Q. As a matter of fact, Mr. Allen had a good deal of trouble picking out, out of three or four samples which you gave him, his own signature which you gave him? You acquired [939] for demonstration purposes a number of signatures, and Mr. Allen had a great deal of difficulty for a few moments in picking out his own?

A. Where was this?

Q. I imagine it was in Spokane; in Mr. Allen's office, was where this conversation occurred. Do you remember that?

A. Well, I've been to Mr. Allen's office many times.

Q. Yes.

A. And talked with him during the course of this investigation and for other purposes.

Q. But you do remember tracing this?

A. Yes, I do remember tracing it, as you refresh my memory. I don't recall whether it was a tracing of this signature or the tracing of the duplicate.

Q. Do you remember when that was?

(Testimony of Elwood V. Denney.)

A. No, I don't. It must have been shortly after that administrative hearing, because that's just after the investigation started—

Q. Yes.

A. And that's when this was put into evidence in the S.E.C. hearing.

\* \* \*

[940]

Q. (By Mr. Emigh): I want to refresh your memory a little further on this. Don't you remember that in Mr. Allen's office sometime early in 1947, that you had possession of this note or the note was there, either you brought it there or had had possession of it, and you discussed this signature with him, and as you say, he was incensed, said it wasn't his signature, and you said "Well, I didn't think it was" and you showed him four or five simulations of his signature, and one genuine signature of his which you had, and you asked him to pick out which one was genuine, and which was not?

A. I recall a conversation with Mr. Allen about his signature, that's admitted.

Q. And do you recall that before he could pick it out— A. No, I don't.

Q. Let me finish. Before he could pick it out, this may help to refresh your memory too, you said "Well, I'll show you which one is yours" and you pointed to one, and says "I can tell that that is yours, because you don't ever put a period after your name or after your initials" and he laughed and said "I never noticed that before" and you

(Testimony of Elwood V. Denney.)

pointed out that when Keane had signed his name to [941] this, that he had put periods after those letters. Now, think of those words I've asked you, and see if that isn't true, and refresh your memory.

A. Let me see a copy of his signature on something.

Q. I've picked at random one check.

A. Yes, there are no periods on this.

Q. Sir?

A. There are no periods on this.

Q. No.

A. I don't recall the details of it.

Q. But you do recall the conversation?

A. Yes, I do recall that I conversed with him.

Q. And you do recall that Mr. Allen was very incensed about his signature on there?

A. I do, and I recall that he was incensed, and said that Mr. Keane had forged his signature.

Q. Do you recall the further fact that in the examination before the Securities and Exchange Commission Mr. Keane very promptly, in reference to this note, volunteered without request on your part, or a question in that regard, to write on this exhibit, Plaintiff's Exhibit 95, what he stated to be the signatures on the original note which is Defendant's Exhibit M?

A. The record so shows.

Q. Yes, and you hadn't asked him any questions? [942]

A. I asked no questions at that.—

(Testimony of Elwood V. Denney.)

Q. Hadn't you consulted with him before about that? A. I don't recall.

Q. You had consulted with him before he went on the stand? A. I did not, no.

Q. At no time?

A. I took no part in the interrogation of Mr. Keane at the hearing—

Q. Did you attend the hearing?

A. —in connection with this matter. I was present, yes.

Q. Had you talked with him before?

A. Yes.

Q. Had you talked with him before about the Independence? A. Yes.

Q. Had you talked with him before about this note which was in the records of the Independence?

A. I believe Mr. Keane produced the note in Wallace during the investigation prior to this.

Q. That's right.

A. I believe that he did.

Q. That's correct, he produced it, that's right.

A. Yes, as I recall it he produced it along with other material which was put in evidence during the administrative hearing.

Q. And you subpoenaed the note which he had and had showed [943] you?

A. The Commission subpoenaed it, yes.

Q. He was subpoenaed? A. Yes.

Q. And in place of the original note he produced that in answer to the subpoena, the copy, isn't

(Testimony of Elwood V. Denney.)

that correct? That's correct, isn't it, Mr. Denney?

A. During these administrative hearings, if I may explain, the investigator ordinarily takes little part in it. The questioning and the procedure is handled by attorneys for the Commission. You'll notice that in the portion that was read here yesterday I wasn't mentioned at all.

Mr. Emigh: Well, I don't believe that quite answers the question. I presume we should have the reporter read the question, and then see if the witness can answer it.

(Whereupon, the reporter read the last previous question.)

A. I don't recall.

Q. (By Mr. Emigh): Well, he at that time had the original, didn't he? A. He must have.

Q. Yes, and he at that time brought the copy with him, didn't he?

A. Yes, he produced the copy. [944]

Q. And he was under subpoena? A. Yes.

Q. And it was a subpoena duces tecum, in other words, you subpoenaed his records?

A. I believe so.

Q. Then the fact is Keane had the original note, his records were subpoenaed, and he produced the copy, and without any questions being asked, volunteered and wrote the name J. A. Allen and the name F. C. Keane, and stated "That's the signatures on the original note" or words to that effect; that's all true, isn't it?

(Testimony of Elwood V. Denney.)

A. I don't recall further than his producing this copy and the refreshment of my memory by reading the record as it was read here yesterday.

Q. But he did sign it there, didn't he?

Mr. Stocking: I think we'll object to any further questions along this line as improper cross-examination and repetitious.

The Court: Sustained.

Q. You did commence your examination of the Lucky Friday and the Pilot by first examining the Independence? A. Yes.

Q. Yes, and you stated to the jury here yesterday that it was the duty of a registered corporation, a corporation whose securities was registered with the S.E.C., to give an [945] annual statement to the S.E.C., is that right?

A. Yes. I testified that this morning.

Q. And the Independence in 1943, were you acquainted with the Independence, the corporation so known? A. Yes.

Q. Did you know that at that time F. C. Keane was the alter ego, the whole corporation, practically, he had absolute control of it, didn't he?

A. I didn't know it at that time.

Q. You do know it now, though, from your examination?

A. Oh, yes, I found out that in 1946.

Q. You found that out in 1946? A. Yes.

Q. How is this annual examination handled each year? Do you go through the records to see who has or has not complied?

(Testimony of Elwood V. Denney.)

A. No, the Regional Office doesn't have that function. All registration statements are filed with our head office in Washington, D. C. It was reported to us from the registration Division that Independence Lead had not filed its annual reports for 1943, 1944 and 1945, and we were asked to contact the proper officers of the corporation to inquire as to why the filing had not been made, and I was asked to do that when I went to Wallace.

Q. And did that occur in 1943?

A. No, that occurred in, I think the latter part of '46, or [946] sometime in 1946.

Q. You weren't requested to check up on these filings for four years after they became delinquent, is that the testimony, or three years?

A. That's right.

Q. What time in 1946 did that—

A. I don't recall. The records would be in our Commission files, and I don't have them with me.

Q. That would be sometime after April, though, I take it; you stated that filing was due in April?

A. Probably the summer or early fall of '46; I don't recall.

Q. And how long did it take you to get the records of the Independence, then, the filing?

A. I recall talking to Mr. Keane about these annual statements two or three times on occasions that I went to Wallace and inquired as to when they would be filed. It seems to me that early, very early, in 1947 I advised Mr. Keane that if the filings

(Testimony of Elwood V. Denney.)

were not made within a short time, the Commission might take action against him and the company for failure to comply with the requirements.

Q. Did they ever comply? A. Yes.

Q. What year?

A. In '46—no, '47; complied with it in 1947, and prepared the—Mr. Keane employed Mr. Randall to make the audit, and [947] the 1943, 1944 and 1945 reports were prepared as the audit for the successive years was completed, and they were then filed with the Commission.

Q. That then took approximately a year to get Mr. Keane to give you an annual report on that company, didn't it?

A. Well, I don't recall, I don't have the registration statements available and I don't recall what the filing dates were, but it seems to me that the reports for the years of '43 and '44 and '45 were made in the late spring or early summer of 1947, and the 1946 report was filed possibly in the late summer of 1947; now, that's just the best of my recollection.

Q. And what action was taken immediately after that report was filed?

A. What do you mean by action?

Q. Well, what if anything did you do in relation to the Independence Lead Mines Company or the officers thereof?

Mr. Stocking: I think I'll object again on the

(Testimony of Elwood V. Denney.)

ground that it's improper cross-examination as to the reports being filed.

The Court: No; some of the cross-examination was not proper and I sustained the objection, but I think what he's done as to the Independence is proper; he testified he investigated it.

Mr. Stocking: I meant as to filing reports. [948]

The Court: Objection overruled.

Mr. Stocking: It is not the best evidence as to the filing of any reports.

The Court: This is cross-examination.

Mr. Stocking: There's no direct testimony about the filing of any reports.

The Court: I recognize that.

A. (Witness): These annual reports are filed with our head office in Washington, with a copy of the filing to the Spokane Stock Exchange. If I recall correctly, when the 1943 report was filed I went to the Exchange and looked at its copy. I did the same thing when the 1944 and 1945 reports came along. In those reports I noticed that there was an indebtedness to Independence Lead by Montana Leasing Company. The first year it was some \$24,000. The next year the amount had grown. In 1945 it had become a considerable amount. I got inquisitive about the matter, took it up with the Regional Administrator, we discussed it at the office, and he suggested to me that I look into it to see who the Montana Leasing Company was and what this indebtedness, how it arose, and it was

(Testimony of Elwood V. Denney.)

during that inquiry into that indebtedness that I discovered that Lucky Friday Extension and Pilot funds had passed into the hands of Montana Leasing Company. That was the beginning then of the investigation of the diversion of [949] funds of Lucky Friday Extension and Pilot.

Q. Now, in relation to the Independence Lead Mines I'll ask you whether or not—you examined that corporation, didn't you, you examined its records?

A. No, I couldn't say that I did examine the records.

Q. Well, didn't you state, the first thing you told us today, that it began with an examination of the Independence Company?

A. I inquired into, as I stated a few moments ago, I inquired into this indebtedness by Montana Leasing to Independence Lead, which did not constitute an audit or an examination of the records of Independence Lead. It amounted to an inquiry.

Q. What did you have to do to examine and find out about these transactions?

A. I beg your pardon?

Q. What kind of an examination did you make to find out about these?

A. I made an inquiry from Mr. Keane and Mr. Randall. Mr. Randall was the one who made the audit.

Q. Did you examine Mr. Randall's audit?

A. Yes, I talked with Mr. Randall and examined

(Testimony of Elwood V. Denney.)

some of his working papers in respect to those items to see what they were.

Q. And you talked with Keane? [950].

A. Yes, I talked with Mr. Keane.

Q. And the upshot of your talk with Keane was as to the Independencee, now, that he was in a bad position with the S.E.C. and subject to prosecution, isn't that true?

A. What do you mean by that, and for what?

Q. I didn't say what; I said he was in bad shape and subject to prosecution at that time, in the Independence?

A. I don't recall that.

Q. You don't recall that, but you may have?

A. The only thing that I recall, as I mentioned a few moments ago, that if the annual reports weren't filed the Commission might take some action to compel their filing, which of course would probably not be prosecution.

Q. As a matter of fact, when you got this audit did you look at it?

A. I never got the audit.

Q. You never got the audit; well, when you talked with Mr. Randall about the audit did he tell you what the audit showed?

A. Surely. What I meant, I never got the audit, he didn't give me—

The Court: I'm interested in something. Have any of the diversions against the Pilot or Extension been charged as against the Independence?

No. 12437

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United States  
Court of Appeals  
for the Ninth Circuit.

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JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
In Three Volumes  
Volume III  
(Pages 901 to 1353)

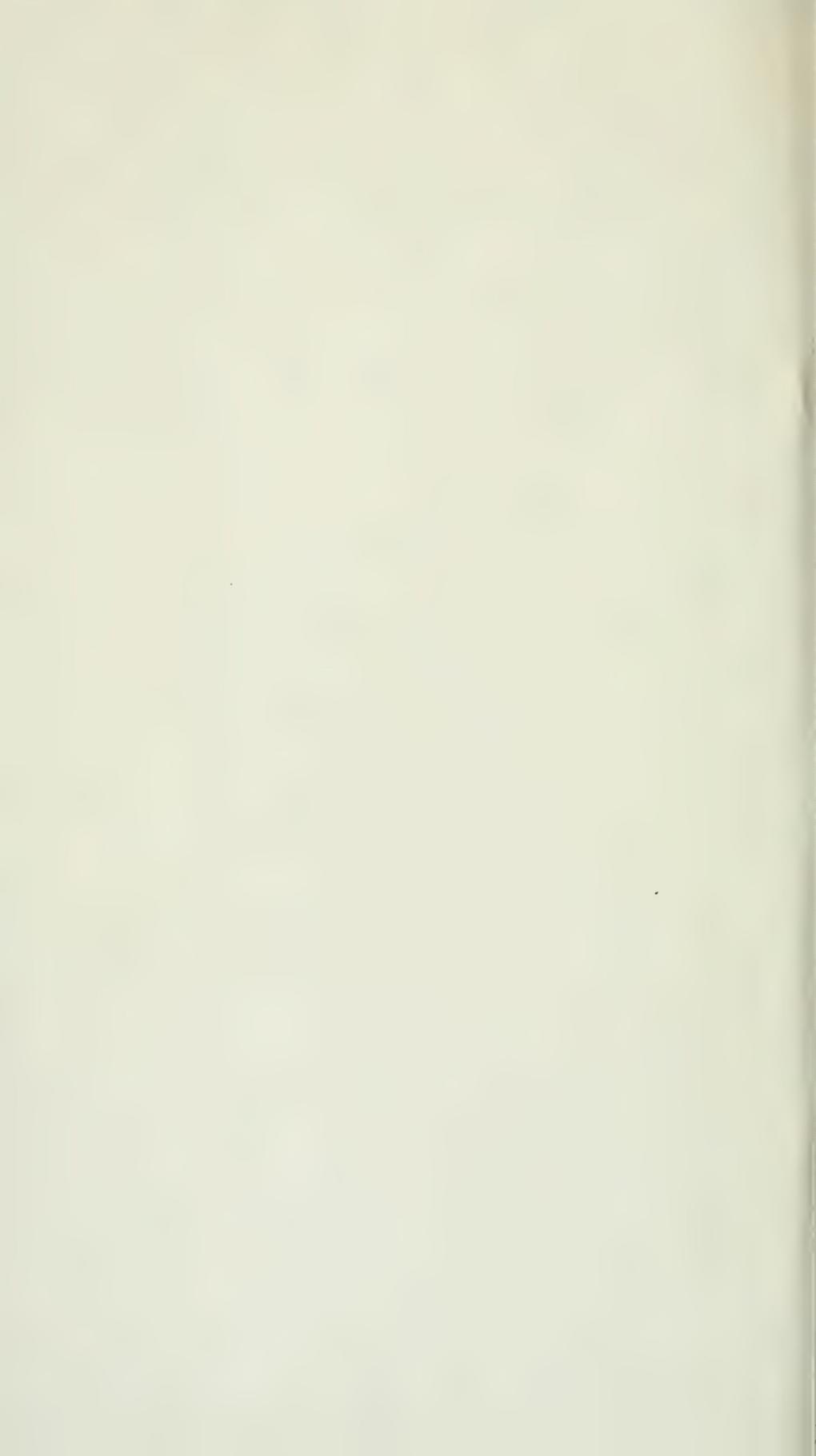
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Appeal from the United States District Court,  
Eastern District of Washington  
Northern Division.

FILED

FEB 21 1950

PAUL P. O'BRIEN,  
CLERK



**No. 12437**

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United States  
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JAMES ANTHONY ALLEN,  
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**Transcript of Record**  
In Three Volumes  
**Volume III**  
(Pages 901 to 1353)

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Appeal from the United States District Court,  
Eastern District of Washington  
Northern Division.



(Testimony of Elwood V. Denney.)

Mr. Stocking: There's a \$10,000 diversion to Independence by Pilot in July or June, 1946.

The Court: There is a \$10,000 diversion claimed from the Pilot to the Independence?

Mr. Stocking: It's a check in evidence.

The Court: All right.

(Whereupon, the reporter read the last question and answer.)

A. Mr. Randall didn't give me copies of the audit. He made his working papers and his finished copy available for me to look at.

Q. And his finished what?

A. And his finished copy of the audit, a copy of which you have there, I believe, for 1946.

Q. You never got that?

A. He never gave us copies of those.

Q. That wasn't the question; I said when you talked to him about this audit did he tell you what the condition of the Independence was?

A. Yes, I questioned him about that.

Q. That's right, and you ascertained at that time what the condition of it was?

A. Yes, I ascertained at that time that a considerable amount of the 1,000,100 shares of Clayton Silver stock listed over here on the Spokane Stock Exchange which was owned by Independence Lead had been sold to provide funds, and [952] those funds from the sale of the stock had been charged in Mr. Randall's audit to the Montana Leasing Company.

(Testimony of Elwood V. Denney.)

Q. Yes, and who had sold that stock of the Independence Lead?

A. The stock was sold to Mr. Halin, to Mr. Chelty, and to Mr. Lilly.

Q. That isn't the question; will you listen to my questions?

A. Apparently by Mr. Keane.

Q. Yes, that's what I wanted to know.

A. Mr. Keane was in control of Independence Lead.

Q. Absolutely.

A. He was its managing director.

Q. Did you find out in your inquiry that he had sold a great amount of the Clayton stock belonging to the Independence Lead also?

A. I found I believe that 228,000 shares, or thereabouts, of Clayton stock had been sold.

Q. By Keane? A. Apparently, yes.

Q. Yes. A. To those three.

Q. And did you know the value of that stock, that two hundred and some thousand shares of Clayton?

A. Yes, it was valued at from 50 to 55 cents a share at the time it was sold.

Q. Something over \$100,000? [953]

A. That's right.

Q. Yes, and did you examine the minutes of the Independence Lead Company— A. Yes.

Q. —to find out what authority Keane had to sell that stock? A. Yes, I saw the minutes.

(Testimony of Elwood V. Denney.)

Q. Not to sell the stock, I'll withdraw that; to loan the money of the company?

A. Yes, there is some reference in the minutes, I believe. I'd have to see them to refresh my memory.

Q. I'll hand you Defendant's Exhibit J for identification, ask you to examine that, and state whether or not that is the minutes?

The Clerk: That's been admitted, Mr. Emigh.

The Court: I'm going to excuse the jury for a few minutes.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Now, I did over the objections of the government permit some inquiry of Mr. Denney as to the Independence, assuming that the inquiry as to the Independence was to be shortened considerably. My inclination was that it was rather doubtful whether the defense was entitled to have the questions objected to answered at all, [954] but if this is a minor part of Mr. Denney's cross-examination, of course he'll not be fully cross-examined this week. I can see little materiality in this line of questioning of this witness. He did say that he examined the Independence and because of that examination he became suspicious. That doesn't allow us to make that the primary object of search, any more than if he had said that he happened to be made suspicious by some statement a man on

(Testimony of Elwood V. Denney.)

Riverside Avenue said; you wouldn't allow us to cross-examine him two or three days about that man, and I am very doubtful that this testimony is proper at all on cross-examination of this witness. I recognize the government is not now objecting, but the government did try to object, and is always in the position that an objector is after an objection before a jury has been overruled.

Mr. Emigh: Well, may it please the Court, this witness has—

The Court: He's produced no summary of the Independence. His testimony as to the Independence was only preliminary, as the reason he became suspicious, and I'm going to have to tell this jury if we continue with this cross-examination it doesn't make any difference whether Mr. Keane did or did not act properly with the Independence; the question is whether or not Mr. Allen is established by the evidence beyond all reasonable doubt to have violated [955] the law as charged. The fact that Mr. Keane may have committed the same offenses against a great host of corporations that it's charged he committed against the Pilot and the Extension is no grounds for cross-examining this witness as to the ramifications of Mr. Keane's affairs and conduct.

Mr. Emigh: Your Honor, I would like to make our position clear to the Court on why we are undertaking this examination to reach these points. The government has introduced a case here showing

(Testimony of Elwood V. Denney.)

a large amount of diversions from the Pilot and the Extension, and in the course of that evidence it has been shown that monies went to the Independence.

The Court: \$10,000 went to the Independence.

Mr. Emigh: The witness stated that in the first place the examination of the Pilot and the Extension started by an examination of the Independence. The jury has a right to infer from that evidence that what the witness discovered in the Independence led him to examine the Pilot and the Extension, and led him to consider the defendant in this case involved in the Independence situation.

The Court: Well, I don't think so. He said he was trying to find out why the statements of the Independence weren't filed. In the course of that he found that some [956] payments or advances were being made to the Montana Leasing. He then investigated the Montana Leasing, and he suspected transactions involving the Extension and the Pilot. Now, as I say, if you're going to spend as much time on material matters of cross-examination of this witness, proportionately to what you're spending on this very preliminary and incidental matter, we'll not be through with cross-examination of Mr. Denney this week.

Mr. Emigh: We'll undertake to do better than that, your Honor.

The Court: No, I say if you were going to spend as much time proportionately on the material mat-

(Testimony of Elwood V. Denney.)

ters as on the very minor matter of the Independence, we'll not be through by next week with Mr. Denney.

Mr. Emigh: Your Honor, I wish to state further that the audit of the Independence shows advances in 1943, 1944, 1945, \$73,760.18 in 1945, \$65,211.00 in 1944, \$25,301.00 in 1943.

The Court: I recognize that you have that in evidence, but this witness didn't put it in evidence. Why should he be cross-examined on it. As a matter of fact, I am doubtful that you had a right to do more with this witness than have him say what he did say, that Mr. Keane dominated the Independence. He's put in no evidence as to the Independence. I don't think he even put in any [957] evidence as to the \$10,000 that went to the Independence except that he may have mentioned that monies went to a number of persons and corporations including the Independence, in the summary of the Extension and the Pilot. The important testimony in this case of course is that a tremendous sum of money went from the Extension and the Pilot to the Montana Leasing and its successor, the Lexington, and that apparently some \$50,000 was checked out by Mr. Allen from that, and that is vital, whether or not Mr. Allen had any connection or no with the Independence. If Mr. Allen aided in diverting money from the Extension and the Pilot to the Montana Leasing, and if he profited by those diversions and then did the things he's charged

(Testimony of Elwood V. Denney.)

with having done, he's guilty, and I'm going to have to tell the jury that they're not to be diverted from the main issue in this case by a question of whether Mr. Keane violated the law with a number of corporations. There's been no objection, but the jury may come in. It is essential that the jury have its time taken up with evidence that is material, and not cross-examination that is a side path.

Mr. Emigh: Is that to be deemed a ruling of the Court?

The Court: I have made a statement. There is no objection. I am saying that it's important the jury be [958] given aid on the important evidence in this case, and that its attention not be distracted by side paths. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Counsel will understand the Court has not made a ruling. There's no objection before the Court. You may proceed.

Mr. Emigh: I think there's a question there.

The Court: All right, the question may be read.

(Whereupon, the reporter read the last previous question, as follows: "I'll hand you Defendant's Exhibit J for identification, ask you to examine that, and state whether or not that is the minutes?"")

Mr. Stocking: I'll object; I think that exhibit is

(Testimony of Elwood V. Denney.) already in evidence, and I'll object; it's improper cross-examination of this witness.

The Court: Sustained.

Mr. Stocking: Did you sustain it?

The Court: Sustained.

Mr. Emigh: Oh, pardon me; I didn't hear your Honor. Exception.

Q. (By Mr. Emigh): Mr. Denney, you have been familiar with the preparation of this case which we are now trying ever since the year 1945, is that right, or 1946, I should say? [959]

A. The investigation started early in 1947, and I've been the investigator in the case, Mr. Stocking and I worked on it.

Q. And you have been working on it ever since?

A. Intermittently, yes.

Q. And do you work in Wallace on it?

A. I beg your pardon?

Q. Do you work on it in Wallace?

A. I have worked on it in Wallace and in Spokane and in Seattle.

Q. Now, when you went to investigating the case where did you get all the bank records in relation to the Extension Company?

A. They were obtained from Mr. Keane—

Q. Yes? A. —and Mrs. Vermillion.

Q. And where did you get the bank records in relation to the Pilot? A. The same place.

Q. Did you in the investigation of this case get the bank records of any other corporation?

(Testimony of Elwood V. Denney.)

A. Yes, the Montana Leasing Company.

Q. And where did you get those?

A. Mr. Keane.

Q. And any other corporation?

A. We obtained some isolated checks and deposit slips, I [960] believe, in regard to Lexington from Mr. Keane.

Q. Isolated checks; what do you mean by isolated checks?

A. That is, isolated from the bank records.

Q. Yes?

A. Individual separate checks, which have been admitted here in evidence.

Q. Some of them have been introduced in evidence here? A. Right.

Q. You got those from Keane too?

A. Yes.

Q. You didn't get all the checks of the Delaware from Keane, did you?

A. The ones that we got that have been produced here.

Q. Yes, and those were for the month of August of what year? A. 1945, I believe.

Q. Did Keane produce for you any of the checks for the other months of that year?

A. I don't recall that he did.

Q. And the other records of the Delaware Company were in his office?

A. No; I don't recall; he didn't produce it.

Q. When you have examined witnesses in Wal-

(Testimony of Elwood V. Denney.)

lace they've largely been examined in Mr. Keane's office, haven't they? A. No, they have not.

Q. On no occasion? [961] A. Yes.

Q. On several occasions?

A. The first hearings we had, as I recall, were at the Pacific Hotel, Mr. Stocking and I. The next hearings were conducted in the post office inspector's room in the post office building. As a matter of convenience, I believe the following day, because all of these voluminous records of the stock certificate stubs, the stockholders' ledgers and other records were in Mr. Keane's office, we went up there and took the evidence there and put these records in evidence in Mr. Keane's office. We arranged there to leave the stock certificate stubs of both Pilot and Lucky Friday Extension, and the stockholders' ledgers, in the possession of Beatrice McLean as a somewht neutral party under instructions of the S.E.C. so that these companies would not be deprived or hindered in any way in conducting their business or transferring stock or keeping stockholders' records.

Q. And did Keane have any explanation why he only had the few checks of the Delaware Corporation, whose records were in his office?

A. We didn't ask him. We only asked him for isolated transactions which we wanted. We were not making an examination of the Delaware Company.

Q. You were not making an examination of the

(Testimony of Elwood V. Denney.)

Delaware, and [962] when you found some checks that you considered competent evidence here, you didn't ask him if he had any others?

A. No.

Q. Now, you have testified about the examining of witnesses. You meant at the formal hearings, didn't you?

A. These were the administrative hearings, persons under subpoena to the Securities and Exchange Commission.

Q. Do you ever examine witnesses not at these administrative hearings or these formal hearings?

A. We interview witnesses, of course.

Q. All right; is Keane's office a headquarters for interviewing witnesses in this case, or was it?

A. No, it was not.

Q. You think not? A. I know it wasn't.

Q. Did you have occasion to interview any witnesses there? A. No.

Q. In the last couple of weeks before this case started did you have conferences up there and have the witnesses brought to Keane's office for you to interview?

A. Mr. Stocking and Mr. Erickson and I were in Wallace a few weeks ago. We had some interviews there with Mrs. Vermillion and Mr. Keane—

Q. Yes. A. —in Mr. Keane's office.

Q. Some other witnesses, weren't there, too?

A. Mr. Hanson came into the office, W. H. Hanson, an attorney, to join in the interview in

(Testimony of Elwood V. Denney.)

regard to a payment on a note or some such thing.  
Is there anybody else you have in mind?

Q. Anybody else that you—how about Bea McLean, did you talk to her there?

A. We talked with Beatrice McLean in her own office over in the Callahan Office across the hall.

Q. And are those the only persons you interviewed in Mr. Keane's office?

A. I don't recall right now anybody but Mr. Keane, Mrs. Vermillion and Mr. Hanson in Mr. Keane's office.

Q. Mr. Denney, do you distinguish between treasury stock and promotion stock?

A. I see no connection between ordinarily the definition of treasury stock and promotion stock.

Q. You see no connection? A. No.

Q. Well, what is treasury stock?

A. Treasury stock is stock which has been issued by a corporation and later re-acquired in some manner or other. It is then, when it gets back into the treasury, gets back into the corporation, it is legally treasury stock.

Q. Well, what is investors' stock? [964]

A. I don't know; I never heard the term before. You mean it's stock which has been sold to the investing public? It must be stock in the hands of the public, if that's what you mean; I don't know.

Q. Do you know what vendor's stock is?

A. Vendor's stock is referred to as stock which is given to a person who might assign property to a

(Testimony of Elwood V. Denney.)

corporation. For instance in this case, in the Pilot, where Grismer and his associates assigned property to the Pilot, that 900,000 shares might be referred to as vendor's stock.

Q. And you've explained what attorney's stock is, that's for services by an attorney?

A. Well, yes, both in Pilot and Lucky Friday Extension stock was issued to the attorneys for legal services.

Q. Yes, and that would be true in any corporation; there's nothing special about the rules in relation to these two; that's attorney's stock?

A. Well, of course it's up to the attorneys; some attorneys accept stock for services, and some don't, I've found out, and sometimes it's referred to as stock to attorneys when they wish to take it for legal services.

Q. Yes, and what is the stock called that was offered to the public in this case? What's that commonly known as?

A. It was different in the Lucky Friday Extension. The stock that was offered to the public by Lucky Friday Extension [965] was treasury stock. The stock offered by Pilot to the public through the underwriters was authorized unissued stock, brand new stock which had never been issued before.

Q. Is that known as vendor's stock?

A. No, sir.

Q. Or promotion stock?

(Testimony of Elwood V. Denney.)

A. Neither. You're speaking of Pilot, now?

Q. That's right.

A. Pilot was authorized unissued shares sold to the public to raise money by the corporation.

Q. And that is limited to the stock described in the prospectus, that offering, isn't that true?

A. Under which company?

Q. Pilot.

A. Yes, the prospectus of the Pilot Silver Lead states that the million shares were authorized unissued stock, if I recall correctly. At least, that's the stock that was sold to the public.

Q. And that's true of the Extension also?

A. No, sir, it is not true of the Extension.

Q. Well, what stock was offered by the Extension?

A. Treasury stock.

Q. Treasury stock?

A. As distinguished from authorized unissued stock. The stock that was issued by Lucky Friday Extension, if you recall, [966] here are the facts: The authorized capital was three and a half million shares. 300 shares were issued to the three incorporators, 100 shares apiece. That left 3,499,700 shares. That stock then was issued to Joe Grismer for the assignment to the Lucky Friday Extension of those mining claims. Joe Grismer then donated back to the corporation some 2,270,000 shares, I don't recall the exact figure, it's on the exhibit, and then that stock that was donated back became true treasury stock.

(Testimony of Elwood V. Denney.)

Q. That's true treasury stock?

A. And Joe Grismer then retained in his name the 1,229,700 shares.

Q. And did not donate that back?

A. No, that was the net cost to the company for those mining claims.

Q. But that was all stock issued for consideration?

A. Yes. The stock became fully paid and outstanding at the time it was issued for the property. A portion was donated back; it became treasury stock, but not outstanding.

Q. And the Pilot stock was offered to the public as new stock? A. Right.

Q. Unpaid stock, in other words?

A. That's right, it was just merely authorized capital, prior to its sale to the public, one million shares.

Q. Now, I think you referred to the Grismer stock in your [967] testimony this morning, that is, certain shares came from the Grismer stock, and certain from the Johnston stock?

A. Yes. Are you talking about Lucky Friday Extension?

Q. Yes. Read the question.

A. I answered it yes.

Q. And the stock that came from Keane's stock, that you state was traced from Keane's stock, what kind of stock was that?

(Testimony of Elwood V. Denney.)

A. Lucky Friday Extension certificate number 15, 300,000 shares to F. C. Keane, charged to organization expense.

Q. And what kind of stock was that?

A. That was new stock.

Q. Certificate 16? A. 15.

Q. Never been issued before? A. Right.

Q. And that went to where?

A. Mr. Keane.

Q. An issuance to Keane for what?

A. The records show organization expense.

Q. For attorney's fee and organization, isn't that true? A. Right.

Q. That's right. What other stock do you trace there in the Lucky Friday Extension?

A. Certificate number 16, 200,000 shares to Elmer Johnston [968] for the same purpose.

Q. That was attorney's stock?

A. Attorney's fees and organization.

Q. None of that stock was treasury stock, was it?

A. No; new stock.

Q. And none of the Pilot stock which you traced was new stock, is that correct, which you traced through? A. Would you read the question?

(Whereupon, the reporter read the last previous question.)

A. All of the stock originally issued for all purposes of Pilot was new stock.

Q. All stock in any corporation, until issued for services or property, is new stock, isn't it?

(Testimony of Elwood V. Denney.)

A. That's right.

Q. Well, you tried to distinguish a certain kind of stock in the Pilot as new stock as I understand it, as distinguished from attorney's stock or vendor's stock or something of that kind.

A. No, I did not, that I recall.

Q. You said it wasn't treasury stock?

A. That's true.

Q. You said it was new unissued stock?

A. Far as I know Pilot never has had any treasury stock. All the stock issued, 2,770,300 shares, on this Exhibit 110, [969] is all new stock.

Q. And you traced out some stock this morning, and that wasn't any of that new stock, was it?

A. I don't recall what you have reference to, right now. Would you amplify that?

Q. Well, I don't know what exhibit it's on, but there wasn't any of that public offering that you have referred to traced out in these proceedings this morning, was there?

A. The only stock offered directly to the public by the Pilot Silver Lead was the one million shares—

Q. Yes.

A. —at 12 $\frac{1}{2}$  cents, to net the company \$100,000.

Q. And you didn't trace that out this morning, did you, in any of these transactions you were tracing this morning? A. No.

Q. That's what I wanted to get at.

A. I've made no reference to tracing any of the

(Testimony of Elwood V. Denney.)

stock offered to the public in the Pilot out of that stock underwritten by the brokers.

Q. Well, what we want the jury to know, then, none of that stock you say was issued by the Pilot as new stock was sold by Allen; he's not charged with selling any of that, is he?

A. It seems to me your question is somewhat vague.

Q. Well, the question is asked. Will you answer it yes, or [970] no, or if you can't answer it, say so.

A. Well, none of this stock issued by Pilot in the first instance went to Mr. Keane—Mr. Allen, I beg your pardon.

Q. None of it did?

A. Mr. Allen does not show as a stockholder.

Q. That's right.

A. He doesn't show here as a stockholder in the Pilot.

Q. All right.

A. It shows that 900,000 shares went to Grismer for claims.

Q. Now, none of the treasury stock that was sold was owned by Allen, was it, in the Extension?

A. No, none of that original issue of stock was put in his name.

Q. That's right.

A. But treasury stock—

Mr. Emigh: Just a minute; we'll object to further answer.

(Testimony of Elwood V. Denney.)

Mr. Stocking: The witness has a right to explain.

The Court: Well, you have redirect if necessary.

Q. (By Mr. Emigh): Now, to get the record clear, did Allen any time have in his name any of the stock that was sold to the public in either case as original issue sold to the public?

A. There was no original issue stock in either company registered in the name of Mr. Allen.

Q. That's what we want to know; you have no records of his [971] having any of that stock in his name?

A. None of the original issue of stock was put in his name.

Q. Then any stock which he sold in this transaction is vendor's stock or attorney's stock, that's correct, isn't it, as defined by you? A. Yes.

Q. Have you had considerable assistance from Mr. Keane in the preparation of this case, Mr. Denney?

A. Mr. Keane came to our assistance after he had pleaded nolo contendere. We obtained additional records—

Q. Now, just a moment; speak up so we can hear you, will you please?

A. They can hear. We obtained additional information from Mr. Keane, and additional records, after he entered his plea of nolo contendere.

Q. Well, he'd been helping you all along, hadn't he, giving you cooperation in everything?

(Testimony of Elwood V. Denney.)

A. Mr. Keane in a sense admitted his guilt in this matter when I first talked with him about the Pilot and Lucky Friday Extension funds, and was cooperative—

Q. Yes.

A. —during the entire investigation.

Q. And you have had him getting evidence for you, haven't you?

A. He has assisted in getting evidence at times.

Q. Now, isn't it true that you've had him talking to witnesses to see what their testimony would be?

A. I don't know much about that. Mr. Keane's conversations have largely been since he pleaded nolo contendere, with Mr. Erickson and Mr. Stocking.

Q. Since then?

A. Since that time. I don't recall that prior to that he gave us any assistance in the interviewing of any witnesses or in going out and getting any information for us.

Q. Well, since the plea and while this case has been being tried here in court have you and Mr. Keane and any of these witnesses been closeted together discussing the testimony?

A. Mr. Keane and Mr. Halin had an interview in our presence yesterday morning in the United States Attorney's office.

Q. And what was the nature of that interview?

A. The interview was in respect to whether or

(Testimony of Elwood V. Denney.)

not Mr. Halin bought the 200,000 shares of Extension stock from him or from Mr. Allen.

Q. Now, what was the purpose of having Mr. Keane and Mr. Halin both come there to your office for the purpose of that interview?

A. It happened inadvertently. We were talking with Mr. Halin, and Mr. Keane came in, and so we asked him to sit down and get in on this conversation here to see if we couldn't [973] arrive at a proper determination of who had this transaction with whom.

Q. And did you tell those witnesses they'd better get together on their statements, or words to that effect? A. No, I did not.

Q. But those conversations did occur?

A. They got angry with each other, and I suggested that they cool off and let's sit down here calmly and see if we can't arrive at a proper answer instead of showing temper the way they did.

Q. That's right, "see if we can't arrive at a proper answer" that's just what you told them, and get together on this thing, wasn't that it?

A. No, it wasn't to get together at all; it was to arrive at what happened. I don't know what happened, only they knew.

Q. And weren't their statements diametrically opposed as to what had happened at that time?

A. They were.

Q. Yes, and you knew what their statements were? A. That's right.

(Testimony of Elwood V. Denney.)

Q. And when they became angry you tried to get them to sit down and agree upon what their statement was what had transpired?

A. Not to agree on what it was, necessarily, but to try to refresh their individual memories as to the facts. [974]

Mr. Emigh: That is all, you may take the witness.

#### Redirect Examination

By Mr. Stocking:

Q. Did I understand your answer correctly to Mr. Emigh's question, Mr. Denney, that none of the stock which you had traced to Mr. Allen, and I believe you were talking about the Pilot stock at that time, was out of stock which had been of the original issue?

A. No, I believe I testified that none of the original issue in stock was put or registered in the name of Mr. Allen. Mr. Allen's name does not appear on this exhibit number 110.

Q. But what was the fact as to the tracing of Mr. Allen's—I mean the certificates that were identified with Mr. Allen in connection with their original certificates that were issued?

A. Well, I found that in taking off the records of the brokers here in Spokane and in Wallace that Mr. Allen sold almost one-half of certificates 13 and 14, representing 650,000 shares of Pilot stock, and got the proceeds for it.

The Court: What certificates?

(Testimony of Elwood V. Denney.)

A. 13 and 14.

Mr. Stocking: I believe that's all.

### Recross-Examination

By Mr. Emigh:

Q. Well, now, is that original issue, or is that off of Joe Grismer's certificate? [975]

A. No, this is out of stock that was issued to Mr. Keane. We're talking about Pilot, now, are we not?

Q. That was Keane's stock originally?

A. Stock originally issued to Mr. Keane, certificate 13 for 280,000 shares, 14 for 370,000 shares.

The Court: 13 was how much?

A. 280,000; 14 is 370,000.

Q. And that had been transferred twice, had it?

A. It was stock which was transferred from 13 and 14 to certificates 1231 through 1250, and 1284 through 1286, 1330, 1331, 1374 and 1375. Those were direct transfers from 13 and 14, and certificate 272 also.

Q. Now, that was all part of Keane's attorney's stock, wasn't it?

A. It all came out of 13 and 14.

Q. Will you answer my question? Was that all part of Keane's attorney's stock?

A. Yes, it's all part of that stock that was issued to Keane for the Cincinnati and Phelan group of mining claims. It was not attorney's stock.

Q. And not attorney's stock?

(Testimony of Elwood V. Denney.)

A. It was not. It was vendor's stock.

Q. But it wasn't any part or portion of the public offering under the prospectus?

A. It was not a part of the one million shares which was [976] offered to the public.

Mr. Emigh: I'd like to ask another question on cross that I overlooked.

The Court: All right.

Q. I think you said that Keane had been, since entering his plea of nolo contendere, of considerable assistance to you, or something to that effect?

A. He has been of assistance to the Commission and the United States Attorney's office.

Q. And that's only since the entry of the plea?

A. I stated in addition to that that Keane had been cooperative in this investigation since its inception.

Q. Yes.

A. I mean the inception of the investigation of Pilot and Lucky Friday Extension.

Q. Did his attitude in that regard have anything to do with the fact the condition of the Independence wasn't pressed by the S.E.C., no action was taken by the S.E.C. in relation to the condition of the Independence? A. No, it was not.

Mr. Emigh: That's all.

#### Redirect Examination

By Mr. Stocking:

Q. What was the situation with regard to the Independence, since counsel has asked?

(Testimony of Elwood V. Denney.)

A. There was a probable lack of jurisdiction on the part of [977] the Commission over what happened in the sale of Clayton stock by the Independence Lead Mines Company.

Q. And what about the statute of limitations?

A. The statute of limitations had not run, but it was a question of jurisdiction.

Mr. Stocking: No further questions.

Mr. Emigh: That is all.

(Whereupon, there being no further questions, the witness was excused.)

The Court: Any further evidence?

Mr. Erickson: At this time the government rests, reserving the right to offer any exhibit that may have been overlooked.

The Court: The government rests subject to reoffering or offering exhibits which have been identified, is that it?

Mr. Erickson: Yes, which have been identified and not finally received in evidence.

The Court: All right. Any reason this jury should not be excused until tomorrow morning at 10 o'clock?

Mr. Emigh: Your Honor, for the purpose of the information of the Court, at the time the government rests we'll have some motions to make.

The Court: Well, I had that in mind. I said is there any reason the jury shouldn't be excused.

Mr. Emigh: No, but I wanted to advise the Court.

The Court: I recognize that. The jury is excused until tomorrow morning at 10 o'clock. The jury will keep again in mind the admonition of the Court. You're not to talk about any phase or element of this trial or any person, matter or thing connected with it with any person whomsoever or among yourselves, or allow any person to talk with you about it. You're not to read about it or listen about it. The idea is you're to keep open minds, prepared to hear what you may later hear. The idea is further you will keep open minds to hear the argument on each side after the evidence has all been completed, and be prepared to listen to the Court's instructions. It may be that after you've heard the Court's instructions as to certain phases that you will understand the importance of certain evidence that you've now overlooked, so the idea is for you to keep open minds, get no information at all about this case except in open court, and give none about it, about any phase or element of the case. Each one keep a good memory independently of others. Good night. See you at 10 o'clock tomorrow morning.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: All right, the jury has retired. The government has rested subject to correction of the record [979] as to exhibits which have been identified and may not have been admitted.

Mr. Emigh: May it please the Court, the defendant desires to present a motion to the Court to strike a number of exhibits pertaining to transactions occurring subsequent to December, 1946, which will take a considerable time to go through this collection here and single out to direct our motions against. This part we would ask, in order to facilitate the matter, that we be permitted to take this motion up in the morning, and in the interim see if we can find what material exhibits we feel should be stricken or a motion should go to the striking thereof, to preserve the record as we see the situation of the defendant.

The Court: All right, counsel; that's one motion you wish to make, with respect to the striking of exhibits since a certain time in December, 1946?

Mr. Emigh: That's right, your Honor.

The Court: Now what other motions?

Mr. Emigh: The other motions will be motions for judgments of acquittal on each count respectively.

The Court: Well, counsel, I don't wish to be arbitrary, but nothing is ever gained by long and lengthy discussions of matters that the trial judge is settled in his mind about. From time to time objections have been [980] made about the elimination of certain exhibits after December, 1946. I think there is no merit in those objections. While the defendant has not put on his case and while the defendant has made no opening statement through

his counsel, it is rather plain what the defendant's position is.

The government's position in part, in brief, is that Mr. Keane and Mr. Allen entered into a conspiracy early in 1945 to the effect first, that they would organize certain property which came to be called the Extension, and that they would use the proceeds of the stock for their personal benefit, principally through the Montana Leasing; that they did organize the Extension and did use the proceeds of the stock of the Extension largely for their personal benefit or for the Montana Leasing, and that the Extension proving an insufficient source, that they then ratified and confirmed the conspiracy, and agreed to extend it to the Pilot, which they organized, and that they did use a substantial amount of the proceeds of each for their own benefit or for the benefit of the Montana Leasing, and that in addition, the funds of the Montana Leasing, instead of being used to bail out that concern, were to a large degree diverted for their own personal benefit.

Now, it's been suggested in cross-examination that [981] Mr. Allen was not a partner in the Montana Leasing, and that Mr. Keane was the one who dominated the Pilot and the Extension, and that he's an embezzler, an inebriate, and a perjurer. However, up to this time the evidence shows that contrary to the implications of cross-examination, that Mr. Keane's stock, whether it was attorney's stock or Cincinnati stock or organization stock, to

a large degree showed up into the bank accounts of Mr. Allen. It's been indicated that a large amount of the treasury stock proceeds of the one company and of the authorized issue of the other to the public got into the Montana Leasing, and that a large part of it got from the Montana Leasing to Mr. Allen.

Now, if Mr. Allen and Mr. Keane were in a loose sort of partnership such as Mr. Keane says, it's understandable how Mr. Keane's stock would be sold in such a way that Mr. Allen would get the proceeds, and it's understandable then how a certain share of the Montana Leasing Company monies would come to Mr. Allen, but if Mr. Allen was not a partner with Mr. Keane, had no connection with him at this time, it is exceedingly strange how Mr. Allen would get any of that money. What happened after 1946 can be of great assistance to the jury in knowing what the relationship was before 1946, in December, so that what Mr. Allen did as to stock after December, 1946, that had originally come [982] to Keane before December, 1946, is very pointed in the inference it allows as to the truthfulness of what Mr. Keane is saying and as to the falsity of the inferences on cross-examination.

Now, it may be that after Mr. Allen has explained, it will be found how it happened he got all this money, but at the present time, regardless of how bad Mr. Keane may be, it would appear at this time that the jury is entitled to find that Mr. Allen was profiting out of whatever kind of an association he had with the evil Mr. Keane, so that

exhibits after December, 1946, can be very material in determining whether or not there was an unholy alliance between Mr. Keane, confessedly evil, and Mr. Allen.

Aside from that, the motion it seems to me has no real merit for the reason that under the evidence the jury has a right to find that Mr. Allen and Mr. Grismer were conspirators, and certainly that conspiracy, if there existed one, didn't end in December, 1946. It might have become more active and ripened more. The government has alleged that Mr. Grismer, Mr. Allen and Mr. Keane were three conspirators. There is much in the evidence that would indicate that Mr. Keane and Mr. Allen were the conspirators and that Mr. Grismer was a dupe. However, a dupe can be a conspirator. Usually a dupe who is a [983] conspirator gets little of the proceeds, and under the evidence the jury would have the right to believe that Mr. Allen and Mr. Keane together took advantage of Mr. Grismer as a dupe until December, 1946, at which time Mr. Allen monopolized the advantages of Mr. Grismer.

I'm saying these things because at this stage of the proceedings I have to consider as true all of the evidence produced by the government, not only the evidence is true, but I have to interpret in favor of the government all reasonable inferences to be drawn from that evidence. In addition to that, at this stage of the proceedings if there's contradictory evidence or evidence that permits of contradictory inferences, I have to consider as correct the con-

tradictions most favorable to the government and the reasonable inferences which are most favorable to the government, and so I say that looking at the testimony that way the jury would be entitled to find from this evidence as it now stands that Mr. Keane and Mr. Allen were the primary conspirators, that Mr. Grismer was the dupe of both until December, 1946, and thereafter he became the dupe of Mr. Allen, and that Mr. Allen while pretending to have no interest or connection with Mr. Keane, was actually associated with him in some sort of an unholy partnership as evidenced by the money that he got, which is very difficult to understand if he had no connection with the stock, [984] so that I think you can make your motion as to certain exhibits, stating the time. I'm going to deny them on the basis of the date of December, 1946, being the end of any conspiracy, and even if it were the end of the conspiracy the acts of Mr. Allen or the advantages he obtained with respect to the Pilot or the Extension or the Montana Leasing are of evidentiary worth to aid the jury in determining the truth.

The Court must take knowledge of the fact that embezzlers sometimes tell the truth. The Court realizes that perjurers sometimes tell the truth, and the jury has the right to believe that regardless of how they may condemn the acts of Mr. Keane, the jury has a right to believe that those evil acts of Mr. Keane were partnership acts, and that Mr. Allen while concealing his identity was profiting by

Mr. Keane's activities, and therefore in effect I'm telling counsel that unless there is some situation not pointed out to me, that I'll have to deny the motions for acquittal and will have to deny motions to strike evidence on the basis of referring to a period after December, 1946.

Now, nothing that I've said here indicates that I mean that Mr. Allen is guilty. I'm merely ruling that under the rules of law, that the jury has a right to hold him guilty; even on the evidence as it is now the jury [985] would have a right to acquit him if they didn't believe any of the evidence against him, or didn't believe it to the extent that they were satisfied of it beyond all reasonable doubt, and certainly after the jury has heard all the evidence of Mr. Allen they may think that he's given explanations that satisfy them actually that he's innocent, or they may think that it's very doubtful that he's innocent, but that they are not convinced beyond all reasonable doubt that he's guilty. I've said this last so that it will be understood that I'm not passing at this stage of the proceedings on the guilt or innocence of Mr. Allen, but I'm merely saying it does not seem to me that either motion suggested is a motion that can be granted. In other words, I would be taking away from the jury those things that the jury have the right to determine.

Now, for the sake of your record, you may refer to those exhibits and make your motions, and do that tomorrow. You may expect to have them overruled. I'm not anxious for long argument, because

I've been having this case argued to me on pretty near every objection made as to evidence from its inception. There's very little argument that can be made that is not repetition. I would suggest that we meet here at 9 o'clock tomorrow morning, if you wish, for the sake of making your [986] record. If there is some particular matter that I've overlooked of course I want you to call my attention to it, and if the ground of the motion is meritorious I hope I will appreciate it.

Mr. Emigh: Your Honor, I think in view of the statement of the Court as to both the subjects on which motions will be addressed, the matter can be disposed of, both matters, inside of half an hour; it won't take an hour, because in view of the Court's statement, what we desire to do is to preserve the record and to preserve our position in the matter, and in that regard, your Honor, saving the clerk's time for us to be poring over these exhibits, if the Court would entertain a general motion addressed to exhibits admitted and to which objection has been made relating to matters occurring subsequent to November, 1946, as a general motion without specifying each specific exhibit, that would save a great deal of time and we believe would preserve our record.

The Court: You can make such a motion, and I will receive it. I'm saying that if there should be some particular specific exhibit after December, 1946, that for some reason is subject to an objec-

tion quite apart from what the other exhibits are, that I would be apprised of that.

Mr. Emigh: Well, we wouldn't intentionally do anything [987] like that. We have intended to preserve our record because we have a theory that the conspiracy had terminated.

The Court: I recognize that, counsel, and ordinarily I'd say that what I had announced since the jury retired would be apparently arbitrary, but I've been thinking of these matters from the time the case started, and felt that instead of doing the defendant and his counsel an injustice, it was better for me to tell counsel first what my view was, so that if counsel had any particular thing in mind that has not been presented, they can, and I'll meet with you at 9:30 tomorrow morning, or 9 o'clock tomorrow morning. [988]

\* \* \*

(Whereupon, at 4:55 o'clock p.m. the Court took a recess in this cause until Wednesday, June 15, 1949, at 9:30 o'clock a.m.) [989]

(Spokane, Washington, Wednesday, June 15, 1949, 9:30 o'clock a.m. Eighth day of trial.)

(All parties present as before, except Mr. Etter and Mr. Cullen, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Emigh: May it please the Court, the defendant James Anthony Allen, at this time, and for the convenience of the Court, files his motion to strike exhibits and testimony, in written form, and I may state that a copy of this motion, a carbon copy, has been handed to the reporter, and we ask that it be made a part of the record of this case. This is the motion that we stated last night and we present this morning, and for the convenience of the Court we are presenting it in this form.

(Reporter's Note: Defendant's motion to strike exhibits and testimony is included in the record as a part of the Clerk's transcript of pleadings in this case.)

The Court: The motion to strike exhibits and testimony presented in writing has come to the Court's attention. Said motion is overruled and denied. Exception noted. It may be filed by the clerk.

Mr. Emigh: Now at this time, may it please the Court, [990] and upon the denial of the motion just presented, the defendant James Anthony Allen, for the convenience of the Court, presents his motion for judgment of acquittal in writing, and states that a carbon copy of this motion has been furnished to the reporter, and we ask the motion be made a part of the record in this case.

(Reporter's Note: Defendant's motion for judgment of acquittal is included in the record as a part of the Clerk's transcript of pleadings in this case.)

The Court: Your motion for judgment of acquittal presented in writing in behalf of the defendant has come to the Court's attention. Such motion in its entirety and as to each and every count therein mentioned is overruled and denied. Exception allowed, and the clerk may file same.

Mr. Emigh: That disposes of the motions which we intended to file at this time.

(Whereupon the Court checked with counsel on the exhibits admitted and not admitted at this point in the trial.)

The Court: Is there any reason that we shouldn't be at recess until 10 o'clock, the time fixed for the jury to come in? I assume, and I'm saying this before the jury comes in, I assume that the defense counsel is going to make an opening statement. Such is not required. Does [991] defense counsel expect to make an opening statement?

(Mr. Etter and Mr. Cullen now present at the trial.)

Mr. Etter: Yes, your Honor, we do.

The Court: All right, that's one. I assume, without of course knowing, that Mr. Allen expects to testify?

Mr. Etter: That's correct.

The Court: Even before you say correct, it's not essential at all for the defendant to notify the Court as to whether he is going to testify, and even if the Court was notified as to what he's going to do, he has the right to change his mind completely.

(Testimony of Elwood V. Denney.)

without advice, but I would expect to tell the jury when they came in, if satisfactory to defense counsel, that defense counsel would make an opening statement; is that satisfactory?

Mr. Etter: That's right, your Honor.

The Court: And in your opening statement you of course can outline what witness or witnesses you expect to take the stand. The Court will be in recess until 10 o'clock.

(Short recess.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [992]

The Court: Members of the jury, the government has rested, which means that it has put in the evidence that the government desires to present in its case in chief. Counsel for the defendant may now, if they choose, make an opening statement to you. Such opening statement by the counsel for the defendant is similar to the opening statement which you heard in the beginning of the case made by Mr. Erickson for the government. That is, that opening statement was merely an outline of what the government expected the evidence would show. It was not evidence, it was not argument; it was not intended to be considered by the jury as more than an outline of what might be presented so that the

jury would better understand the evidence when and if it were introduced. The defendant's opening statement likewise is not evidence; it's not proof, not intended to be argument, but it is your duty to pay careful attention to this opening statement so that you will better understand the evidence which may be presented by the defendant. All right, counsel.

### Defendant's Opening Statement

Mr. Etter: May it please the Court, ladies and gentlemen of the jury. As his Honor Judge Black has informed you, this statement that I'm going to make is termed an opening statement, and in brief will be a statement of what we expect to prove on behalf of the defendant [993] Allen.

As you recall, the government has rested its case after calling all of its witnesses to testify to the claims made in the counts in the indictment against this defendant, and as you're listening here you realize they have attempted to show by those witnesses that the government's counts laid in the indictment as against the defendant are properly proved at least by the testimony which they have introduced.

It is my purpose now to, as I have said, make the opening statement and to state to you what we expect to prove in this case. Our evidence and testimony will show that the defendant in this case was and has been engaged in mining and in the operation of mines for a number of years, and that he began his operation of mines and in the mining business

somewhere in and about the year 1937. We will show furthermore that his first mining operation in which he participated to any extent was the organization and operation of the Callahan Consolidated Mine, to which reference has been made here in the testimony.

The evidence will on behalf of this defendant, ladies and gentlemen, further show that Mr. Allen became interested with a number of people who owned various and numerous mining properties in the area to which reference [994] has been made during the trial thus far, and that the mines and the ownership of mines related to properties in the vicinity of the Pilot Silver Lead Mines, the Lucky Friday Extension, the Independence Lead Mines, the Vindicator, the Hibernia, Gold Hunter, and other mines separated and adjacent to each other in the area to which most of the reference in this trial has been made. We will show furthermore that since the early operation and engagement by the defendant Mr. Allen in the mining operation, that he has for some time envisaged and visioned a cooperative development of this entire area, and that for a great number of years he has worked toward that end in his negotiation with the various ownerships of the properties to which reference has been made; that in the pursuit and culmination of this idea Mr. Allen has dealt with a great many people not only in this area but in Chicago and the east, where the ownership of some of the property is vested.

We will further show that the defendant himself has been and was interested in properties in Neihart, Montana, to which reference has been made here by designation of the Montana Leasing Company and the Lexington Silver Mines, Inc. We will show that so far as those properties are concerned that they have been great producers of large values in metals. We will further [995] show in this case, ladies and gentlemen, that Mr. Joseph Valentine Grismer, Joe Grismer, was employed by Mr. Allen while Mr. Allen was the superintendent of operations of the Callahan Consolidated in Wallace, Idaho, and that Joe Grismer had at times invited Allen to participate in mining ventures and property in which Joe Grismer was interested, and that he had on numerous occasions throughout a long acquaintance called upon Mr. Allen for assistance in problems that related generally to the mining operations.

The evidence will further show so far as this defendant is concerned that certain individuals, and particularly John Sekulic, proposed the organization of a mine company known as the Lucky Friday Extension Mine, and that Mr. Sekulic claimed that a great deal of property could be developed, and that he and others associated with him did propose that such property as he had in mind for development be developed through a central shaft in the Lucky Friday Mine, to which reference has been made here on numerous occasions as the Big Friday, as distinguished from the mine directly concerned

in this particular action, the Lucky Friday Extension. I should like to advise, and I think you probably know, but in the swirl of testimony as to the mines, that the Big Friday is precisely and exactly the same mine as the Lucky [996] Friday. Now, we want to show you that at that time the Big Friday treasury was exceedingly low, and we shall show that there was on hand so far as assets at the time, and pending obligations, at the time of the organization of the Extension, a very, very small amount of money in the Big Friday treasury. We will show at such time as the organization of the Lucky Friday Extension began and was culminated with the signing of contracts, cooperative contracts between the Lucky Friday and the Lucky Friday Extension, that shortly thereafter there was a rise in price of stock, and not only that, but there was a great deal of development so far as the Big Friday was concerned, and that this development reached the extent that there was about four hundred feet of shaft driven with money secured from loans arising out of contract obligations with the Extension Mine, and that likewise the stock of all of the properties in that particular area, not only the properties of the Extension, but the properties of various mines in the area, rose during that period of great and sharp demand upon the stock market here in the metals market as indicated by the prices in the Standard Stock Exchange.

Now, we will further show in the evidence that Mr. Allen and Mr. Grismer had for many years had

an arrangement, if you call it that, at least they had exchanged [997] stocks in various enterprises in which both of them were interested, and that as a matter of fact there had been stocks loaned between them at various times, and that by this arrangement over a period of years and at the present time, and at the time of this indictment, Mr. Allen had turned over to Mr. Grismer and had paid to Mr. Grismer many hundreds of thousands of shares in various stock in various mining companies in which the defendant Allen had held stock, and we will show furthermore that Grismer did propose and did agree over a period of time to, and did give to Allen different shares in exchange for shares which Mr. Allen had, in which he desired to have an interest, and as a matter of fact that arrangement was operative for a good many years.

We desire likewise and will endeavor to show you that at the time of the organization and the time Mr. Allen was superintendent of the Callahan Consolidated Mining Company, that he consulted with Mr. F. C. Keane on numerous problems that pertained to the operation and building of a mill and the acquisition of property by the Callahan Consolidated and to its entering into contracts with various other companies in the area. We will further show that he discussed with Mr. Keane over a period of years from his first acquaintance the matter of different mining problems in and about Wallace, and likewise [998] discussed with him many times the question of the central development idea which he had in mind.

We will show that he not only contemplated that during his discussions with Mr. Keane, but made several trips to the east to discuss it with the owners of what was known as the Gold Hunter property. We will show too that at the time of Mr. Allen's acquaintanceship with Mr. Keane it was a business acquaintanceship, and at that time Mr. Keane was active in mining circles, and was not only an attorney for various mining companies and held retainers, as he told you he did, but likewise he was associated in the ownership and direction of several outstanding mines in the area, and he was on several occasions a member of the board of directors, and in fact he was a member of the board of directors of the Big Friday Mine at the same time it was proposed that the Extension be formed and that the cooperative contract or agreement be entered into, and that during the progress of these events he continued and was through most of the events set up in the indictment a director in the Big Friday Mine as well as being the promoter and dominant factor in the organization of the Extension.

Now, we shall show furthermore that on numerous occasions during Mr. Allen's acquaintanceship with Mr. Keane there was discussed the development of property [999] which had been closed down, at Neihart, Montana, but which was located in a very favorable metals district, and which had been operated for a long time, and that the operation in Neihart was a complete operation with a completed mill and various structures, bunkhouses, and that it

is of a market value almost in excess of \$100,000; it was an operating company, it wasn't just a hole in the ground over in Montana.

We will show furthermore that Mr. Keane advised Mr. Allen that so far as the development of the Montana property was concerned, that Independence Lead Mines Company, of which he was then president, had on hand considerable money and likewise considerable stock of value which Independence owned and had in its treasury at that time in other mining companies, particularly the Clayton Silver Mines, and he likewise informed him Independence had in the past made investments in other mining companies which had proved profitable, that they had likewise, as testified by Mr. Keane, loaned machinery and pipe to various mines in the area, and it was a practice to operate in that manner because they had not provided for their own so-called deep development program as yet. We will furthermore show that he stated that the investment in Neihart should be an advantageous investment not only so far as Mr. Allen was concerned, and his interest in the property, [1000] but likewise so far as the Neihart property was concerned.

We will show further that he totally relied on such representations made to him at that time, and we will show that so far as Mr. Keane was concerned, he asserted that because of the investment of funds he intended to make in the Neihart property, that he considered that any direction of the

property should remain in him so far as administrative and legal problems were concerned. That as a result thereof, the records, checks and otherwise which you have all seen were kept and maintained in Mr. Keane's office, and Mr. Allen did not see or have access to them until a long time after this indictment, and that at no time had he made or was afforded any examination of the records until long after the indictment was returned, and some short time before this trial began. We will show further that as far as all the books and records are concerned, Mr. Allen had no access to them; that in fact Mr. Keane and at different times through Mrs. Vermillion and himself had refused to allow him any access to these records, and that the office help had been instructed that Mr. Allen wasn't to have access to these records.

We will show that pursuant to the arrangement on investment they did proceed so far as development on the Neihart property was concerned, and we shall show that Mr. Allen contributed tremendous sums of money out of his own [1001] personal funds during 1945, 1946, and in other years for the development of the property at Neihart. We shall show that those funds exceeded \$100,000, drawn from his own funds and invested in that property. We will likewise show that so far as Mr. Allen was concerned, that during the great rise in prices in the peak of stocks, that Mr. Allen did not profit in any sense whatsoever; that so far as his acquired property or stocks in the Lucky Friday Extension, such

was not done as to the bulk of those stocks until the year 1946, and long after the rising market had deteriorated and the metals were on the down grade.

We will show that Mr. Allen's stock was sold so far as Extension was concerned well over a year after the original issue, and well after the time when the market price had reached  $32\frac{1}{2}$  cents, and that the average return to Mr. Allen of Lucky Friday Extension was somewhere in the neighborhood of 8 cents a share. We shall likewise show that as to the Pilot, any stock acquired by Mr. Allen was not sold during the peak market, and as a matter of fact, was not sold as to any share owned by Mr. Allen until well after, twelve, fourteen, sixteen months after the market had been made by the issue of Pilot stock, and that rather than selling at a rising market, that Mr. Allen's highest price, well over a year after Pilot had been incorporated, was the sum of  $3\frac{1}{2}$  cents a share, and as [1002] low as two cents a share as to any stock he had acquired in Pilot, and likewise with respect to the various prices I have mentioned on Extension.

We shall show furthermore that the defendant Allen did not then nor has he since profited from any sales of stock acquired by him in either of those companies, and we shall show that he has not as of the present time profited in any manner from the investment in the Neihart property, and we will show that Mr. Allen, although at the time of his first ventures and shortly after the first time was a man who was worth generally speaking some-

where in the neighborhood of seventy five or one hundred thousand dollars, he is as of this date without funds, and is in debt with regard to the transactions which have occurred in the past seven or nine years to an extent exceeding fifty thousand dollars, and that any funds, practically all the funds Mr. Allen secured were invested in these properties.

We will further show that Mr. Grismer came to him and told him in the year 1946 that so far as the development of these properties was concerned, that the bills were not being paid. Mr. Allen will further show that so far as the Lexington was concerned, the bills were not being paid, although he during 1946 had contributed to the Lexington a sum total in cash exceeding seventy thousand [1003] dollars, and we will show that these funds were deposited in the account that existed in the Wallace bank, and that he had no access to the account, and had a perfect right to assume from his contributions which in some instances were in amounts of ten thousand, fifteen thousand, five thousand dollars, that funds were on hand at that time. We will show too, from records that Mr. Allen made and kept in the course of his business in the operation of the Neihart property, that there is no reasonable excuse for any funds other than the funds which he was contributing and the funds committed from Independence Lead to keep in operation without loss the Neihart property, and we will show that there was no situation that existed whatsoever in

the Lexington property at the time of the development of the Pilot or the Lucky Friday Extension that necessitated any funds whatsoever from either of those companies for the purpose of "bailing out" of anything.

That shall be the proof that we shall expect to show you, ladies and gentlemen. We will show you there was no profit so far as Allen was concerned; that he wasn't a promoter; that he had no relationship whatsoever to these events which have been testified to here, and that to the contrary he hasn't, as I say, profited any. We will show I think to your satisfaction that his experience and work in the mining business has been concerned throughout [1004] the time of this indictment with a central development program; that he worked and has devoted practically all the time he's been in the mining business to that; that he did not work particularly or at all for any group or interested party, and that he never was a partner of Mr. Keane or a partner of anybody, and that pursuant to his program of joining with these different groups and people in the joint operation and attempting to co-ordinate all of the activities of these companies in the central development program in the area in which these mines are located, that he's continued and worked on that program to an ultimate objective, and that up until the present date and as of now he is so engaged in that program; and I think we'll be able to show you that at the request of Mr. Grismer Mr. Allen employed Mr. James A. Wayne,

of Wallace, Idaho, and that they then attempted to get an accounting from Keane; that there was constant refusal by Mr. Keane to divulge anything, and as a matter of fact, I think we shall be able to show that an attorney was sent up there to see if he could get Mr. Keane to make some revelation of what the accounts were for the purpose of making annual statements, and Mr. Keane refused to do so, and finally Mr. Allen, Grismer and Wayne were able to secure a stockholders' list and called upon and Keane and threatened that they would call a stockholders' meeting [1005] and throw him out of the company unless he made some divulgence of what had been going on. That pursuant to that there was a meeting in Mr. Keane's office and Keane, Vermillion and Evans submitted their resignations. Mr. Keane asked for sixty days to get his accounts in shape, and that he did not get them in shape, and that the books were turned over to the Securities and Exchange Commission and Mr. Allen has not seen them since until shortly prior to this trial.

We will show that Mr. Allen did not go to Mr. Keane's house on December 26 at 3 o'clock in the morning, but that he went down a long time prior to that, at about 9 o'clock in the evening, and he saw Keane then after following him for a long time, and that he asked to get a divulgence of what was going on. We will further show that at these meetings and at the time the demand was made upon Mr. Keane, and at the meetings where Mrs. Ver-

million and Mr. Evans were present, Mr. Keane never claimed that he had a partnership with Mr. Allen; he never claimed at the time of his meeting at his home, never claimed there was a partnership arrangement; Mrs. Vermillion never claimed there was a partnership arrangement, none of them made any claim upon the defendant Allen at any time that he was ever a partner in the ventures which have been testified to here by Mr. Keane. Thank you. [1006]

\* \* \*

### ARTHUR LAKES

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Etter:

Q. Will you state your name?

A. Arthur Lakes.

Q. Where do you reside, Mr. Lakes?

A. Spokane.

Q. How long have you been a resident of Spokane? A. Since 1943.

Q. And prior to that time you resided where?

A. I was up in British Columbia.

Q. And will you state, Mr. Lakes, your occupation, please?

A. Mining engineer and consultant.

Q. You're a mining engineer?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. And a graduate of what University?

A. Well, I didn't graduate; I'm from the Colorado School of Mines. [1007]

Q. I see, but you're qualified and licensed as a mining engineer? A. Yes, sir.

Q. And how long have you followed that profession? A. About 35, 36 years.

Q. And Mr. Lakes, do you follow that profession only in the United States and in this area?

A. No; internationally.

Q. Where have you examined mines and done geological work?

A. Oh, in practically all the Northwest states and British Columbia; Colorado River.

Q. And at this time, Mr. Lakes, do you maintain an office in British Columbia? A. Yes, sir.

Q. And here in Spokane? A. Yes, sir.

Q. And have you made examinations, Mr. Lakes, of various properties in the Coeur d'Alene area, having specific reference to properties described as the Big Friday, and the Vindicator, and the Hibernia, and the Gold Hunter, and various mines there?

A. Yes, sir.

Q. And you're well acquainted with that area?

A. Yes, sir.

Q. Are you also likewise acquainted, Mr. Lakes, with the [1008] metals mining area known as the Neihart area? A. Yes, sir.

Q. Which is situated where?

A. Well, it's in Montana near the town of Nei-

(Testimony of Arthur Lakes.)

hart, which is south, I think, and a little east of Great Falls. How many miles I don't know.

Q. And are you acquainted with the property over there, Mr. Lakes, known as the Lexington Silver Mines property? A. Yes, sir.

Q. And will you tell the jury of what that property consists? [1009]

\* \* \*

A. Well, in a preliminary way it consists of the Big Seven Mining Group, with a mill and camp, and the Flora Vein and other operations that have been opened by considerable amount of work and have been with respect to the Big Seven highly productive in silver and lead.

Q. Do you know of your own knowledge that it has been a highly productive mine in silver and lead?

A. From records only, government records.

Q. And they so indicate?

A. Yes, state records.

Q. And there are considerable workings, underground workings, tunnels and likewise?

A. Yes, sir.

Q. And you say there is a mill there?

A. There is a mill, yes.

Q. And is there a complete mining operation there, Mr. Lakes? A. Yes.

Q. Now, Mr. Lakes, did you have reason or cause to make an investigation of the property located in Neihart known as the Lexington Silver Lead?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. Now, before I go any further with that, Mr. Lakes, are you acquainted with the defendant Mr. James A. Allen, seated at my right?

A. Yes, sir. [1010]

Q. And how long have you known Mr. Allen?

A. Well, I think about around 1944.

Q. Around about that time? A. Yes.

Q. And are you acquainted with Mr. F. Clayton Keane? A. Yes, sir.

Q. And when did you first meet Mr. Keane?

A. In the late fall of 1943.

Q. In the late fall of 1943? A. Yes, sir.

Q. Do you recall what date that would be in 1943?

A. No, I couldn't. There was some snow. I came over into Wallace, and there was some snow on the ground, so it was late fall.

Q. It wasn't the summer, was it?

A. No, it wasn't the summer.

Q. Now, you say that you did make an inspection of the Neihart property? A. Yes, sir.

Q. And when was that inspection made, Mr. Lakes? A. In July, 1944.

Q. In July of 1944? A. Yes, sir.

Q. Had you been to the property in Neihart prior to July of 1944? [1011]

A. I had never been in Neihart prior to July, 1944.

Q. Well, Mr. Lakes, there is an exhibit admitted in evidence, and I'd like to read just a part of it

(Testimony of Arthur Lakes.)

here to you. It's dated June 29, 1943, office of Independence Lead Mines Company, Wallace, Idaho—

Mr. Erickson: What exhibit is that?

Q. That's Exhibit J, Defendant's Exhibit J, Mr. Erickson, and it is stated in this exhibit as follows, Mr. Lakes: "The president stated that the Montana Leasing Company had employed Mr. Arthur Lakes to make an examination of the property under lease from Benton Mining Co. and the Snowstorm Group of claims, located in Cascade County, Montana, that said examination had been made and that Mr. Lakes had recommended the prospects incident to said work being carried on by the Montana Leasing Company in the highest terms and had stated that, in his opinion, the continuation of the work would result in the securing of a substantial ore body." That is dated, Mr. Lakes, June 29, 1943. Had you made any examination of the property described before June 29, 1943?

A. I made the examination, and the first examination, in July of 1944.

Q. In July of 1944? A. Yes, sir.

Q. And on June 29 of 1943 or immediately around that time [1012] were you acquainted at all with Mr. F. C. Keane? A. No.

Q. You were not acquainted with him?

A. No, sir.

Q. Did you, Mr. Lakes, make a written report of your investigation to Mr. Keane on that property at Neihart?

(Testimony of Arthur Lakes.)

- A. I made a report dated August 6, 1944.
- Q. August 6, 1944? A. Yes.
- Q. And what was the nature of that report?
- A. It was favorable.
- Q. It was favorable?
- A. Yes, sir. August 7, pardon me.
- Q. August 7 of 1944? A. Yes.
- Q. And you submitted that, did you, to Mr. Keane? A. Yes, sir.

Q. And did you have any more business or any more investigation of that property after you had made the report, Mr. Lakes?

A. Yes, I made periodic trips up there for some time after that.

Q. For some time after that?

A. Yes; I can't specify.

Mr. Etter: I think that's all, Mr. Lakes. [1013]

#### Cross-Examination

By Mr. Erickson:

Q. Mr. Lakes, did Mr. Allen employ you to make those examinations of the Neihart property?

A. Mr. Keane employed me to make the examination of the Neihart property.

Q. Who paid you for making it?

A. Mr. Keane paid me.

Q. Did Mr. Allen pay you anything for making those examinations?

A. Not that I recollect.

Q. Are you a mining engineer, Mr. Lakes?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. Do you hold a degree from a university for mining engineering? A. No, sir.

Q. You're just a practical mining engineer?

A. Well, I had a little better than that. My father was professor of geology at the Colorado School of Mines. I went to the School of Mines. I went in and learned geology under my father. I learned assay and chemistry from one of the best chemists in the United States, and I worked under other engineers, as some of the most prominent engineers have done.

Q. Are you a geologist?

A. Yes, sir. [1014]

Q. As a matter of fact you are a geologist more than you are a mining engineer, are you not?

A. Well, yes; that's rather a difficult differentiation, though.

Q. Do you hold a degree in geology?

A. I have no degrees, no, sir.

Q. And you have made considerable examinations on properties in the vicinity, in the Neihart vicinity there, on this Lexington—

A. The only property I've examined in Neihart was the property we're speaking about.

Q. Is the Neihart district a known mining district with several mines, or is there only just the one?

A. No, it's a known mining district that dates way back, and there's several mines there.

(Testimony of Arthur Lakes.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-m was marked Plaintiff's Exhibit No. 8-m-1 for identification.)

Q. I'll hand you Plaintiff's identification 8-m-1, and ask you to state if that is not a check payable to yourself signed by the defendant James A. Allen?

A. Yes, sir.

Q. Isn't that a check to you for work on the Neihart property?

A. Not that I know of, sir. It says "charge to the Pilot Lead". I worked a little at the Pilot, too. [1015]

Q. Did you do some geology work at the Pilot?

A. I did some geology work on the Pilot, yes, sir.

Q. And that's for \$400.00? A. Yes, sir.

Mr. Erickson: I offer 8-m-1 in evidence.

Mr. Etter: I'll object to the admission of this exhibit at this time, your Honor, on the ground that it's incompetent, irrelevant and immaterial to prove anything so far as this witness is concerned of any association with the defendant Allen as brought out on direct examination; it's incompetent, irrelevant and immaterial.

The Court: Let me see it.

Mr. Etter: I didn't ask him any questions about that.

The Court: Objection overruled.

Mr. Etter: Exception. I want to add further, it's

(Testimony of Arthur Lakes.)

improper cross-examination as not being gone into on direct at all.

(Whereupon, Plaintiff's Exhibit No. 8-m-1 for identification was admitted in evidence.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-i was marked Plaintiff's Exhibit No. 8-i-2 for identification.)

Q. (By Mr. Erickson): Mr. Lakes, I will hand you Plaintiff's identification 8-i-2, and ask you if that is not a check [1016] payable to yourself signed by the Montana Leasing Company?

A. Yes, sir.

Q. Is that check for \$500.00 dated February 22, 1946? A. Yes, sir.

Q. And what is that check for?

A. I have no recollection, but it looks like it would be payment for an examination.

Q. And that's signed by the defendant J. A. Allen, is it not? A. Yes.

Mr. Erickson: I offer Plaintiff's 8-i-2.

Mr. Etter: No objection.

The Court: Exhibit 8-i-2 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-i-2 for identification was admitted in evidence.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-g was marked Plaintiff's Exhibit 8-g-1 for identification.)

(Testimony of Arthur Lakes.)

Q. (By Mr. Erickson): Mr. Lakes, I'll hand you Plaintiff's identification 8-g-1, and ask you to state if that is not a check payable to yourself by the Montana Leasing Company and signed by the defendant J. A. Allen? A. Yes, sir.

Q. And that is dated December 21, 1945, and is for a thousand dollars, is it not?

A. That's right, sir. [1017]

Q. What does that check represent?

A. I think that that was the purchase of some Lucky Friday Extension stock that I had.

Q. That check is signed by the Montana Leasing?

A. Yes, sir.

Mr. Erickson: I offer it.

Mr. Etter: I object to that as wholly outside the scope of the direct examination, and not material or competent in any sense to prove any issue made in this case; a private sale of stock.

The Court: Well, it goes to the relationship of the witness and the defendant. He's testified he didn't recall any check from the defendant.

Mr. Etter: I recall he testified that the defendant Keane hired him and paid him. He hasn't testified he never did any work for Mr. Allen.

The Court: This is my note, that he doesn't recollect that Mr. Allen paid him anything. Objection overruled. Exhibit 8-g-1 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-g-1 for identification was admitted in evidence.)

(Testimony of Arthur Lakes.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-a was marked Plaintiff's Exhibit No. 8-a-1 for identification.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification [1018] 8-a-1, and ask you if that is not a check dated June 18, 1948, to yourself from the Montana Leasing Company and signed J. A. Allen?

A. June 18, 1945, signed by the Montana Leasing Company to me, not 1948.

Q. That is for \$300.00? A. Yes.

Mr. Erickson: I offer Plaintiff's identification 8-a-1.

Mr. Etter: I object to it on the same grounds; I don't know that it proves anything in this case.

The Court: Objection overruled; 8-a-1 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-a-1 for identification was admitted in evidence.)

The Court: Now, counsel, if you have a number of those checks I think you should collect them together.

Mr. Erickson: This is the last one, your Honor. Wait—there are some more here; I will offer these in a group; these are not marked with any of the identifications.

(Whereupon, a check from Plaintiff's Exhibit for identification 8-c was marked Plaintiff's Exhibit No. 8-c-3 for identification.)

(Testimony of Arthur Lakes.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification 8-c-3, and ask you to state if that is not a check, an unsigned check by the Montana Leasing Company payable to [1019] yourself in the sum of \$189.07 dated August 16, 1945?

A. It's not signed.

Q. Do you recall anything about that?

A. That check was \$189.00, and that was for some work for the Lucky Friday Extension, and I think for Montana Leasing Company, inclusive of expense, making the odd amount.

Q. There's a notation "O.K.'d per phone." Does that recall anything to your mind?

A. No, it doesn't, Mr. Erickson.

Q. Do you know who made that check or authorized it?

A. Well, that's Mr. Allen's handwriting, I think.

Mr. Erickson: I offer 8-c-3.

Mr. Etter: I'll object on the same grounds previously mentioned; it's outside the examination, and improper cross.

The Court: Let me see it. Well, that objection is sustained. It's an unsigned check.

Mr. Erickson: The testimony of the witness was it's in Mr. Allen's handwriting.

A. (The Witness): I think.

The Court: Well, I appreciate that he now thinks it looks like Mr. Allen's; there's nothing to show at the time he received it that he knew it was Mr. Allen's, or that he connected it at the time. The

(Testimony of Arthur Lakes.)

check is entirely without moment in this case, and is rejected. [1020]

(Whereupon, the Plaintiff's Exhibit No. 8-c-3 for identification was rejected.)

(Whereupon, three checks were marked Plaintiff's Exhibit No. 122 for identification.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification 122, consisting of three checks, one a photostatic copy of a check dated March 1, 1946, in the sum of \$190.61 to yourself, signed by the Montana Leasing Company by J. A. Allen; do you recall that check?

A. Well, I don't recall it, but it's to me, and there's a notification of what it's for, Pilot Silver Lead, Montana Leasing.

Q. I refer you to the second check in the exhibit, a check dated September 5, 1946, to yourself for \$100.00 signed by the Lexington Silver Lead Mining Company, J. A. Allen; do you recall what that number 2 check in the exhibit is for?

A. There's a notation at the corner "Lucky Friday X Mining Company, August, 1946;" probably for expenses.

Q. The third check is a check dated September 5, 1946, to yourself in the sum of \$100.00 signed by the Lexington Silver Lead Mining Company, by J. A. Allen. Do you recall the circumstances connected with that check?

A. In the corner it says, "Pilot Silver Lead

(Testimony of Arthur Lakes.)

Mining Company, August, 1946." Those were retainers. [1021]

Q. So that you were paid for doing work on the Lucky Friday and the Pilot Silver Lead Mining Company by Lexington Silver Lead Mining Company's checks, then? A. Yes, sir.

Mr. Erickson: I offer 122.

Mr. Etter: We'll object on the same ground, it's improper cross-examination.

The Court: Let me see the checks. Overruled.

Mr. Etter: Exception.

The Court: Exhibit 122 admitted.

(Whereupon, Plaintiff's Exhibit No. 122 for identification was admitted in evidence.)

Q. (By Mr. Erickson): You have a son, Arthur Lakes, Jr.? A. Yes, sir.

Q. Was he employed by Mr. Allen?

A. For a short time, yes.

Mr. Etter: Just a minute; I'm going to object to that as going outside the scope of the direct examination; what's Mr. Lakes' son got to do with anything on direct?

The Court: The only purpose of the question is to show an inclination of the witness towards Mr. Allen, but unless there's something more substantial than has been suggested, I'll sustain the objection.

Mr. Erickson: The purpose was to show the interest.

The Court: Well, I assume that, but unless the

(Testimony of Arthur Lakes.)

interest [1022] is going to be established by more than a temporary employment of his son by Mr. Allen or some company connected with him, it's not of interest here.

Q. (By Mr. Erickson): Is your office in Spokane in connection with Mr. Allen's office?

A. My office is in the Davenport Hotel, and has been since I come to Spokane—

Q. You have—

A. At one time—let me follow this out, please—at one time I did put my map files in there, lacking room, and possibly have gone into that office once a month or once every two or three months when I wanted a map, my own map file.

Q. You have maps and articles still there?

A. Yes, sir.

Mr. Erickson: That's all.

#### Redirect Examination

By Mr. Etter:

Q. Mr. Lakes, when you made these examinations for which you received these checks, were those examinations made of just one property, or of numerous properties?

A. They weren't for any one property. I made a great many examinations. If you want me to specify, I can give you the names as far as I remember.

Q. All right.

A. Sometime about 1945 or 1946 I made an examination of the Gold Hunter Mine at the in-

(Testimony of Arthur Lakes.)

stigation of Mr. Allen, and I [1023] looked at properties over in Superior, the name I can't remember, a number of properties also in the Coeur d'Alenes, the Coeur d'Alene Consolidated and places like that.

Q. Was it a practice of yours, Mr. Lakes, when you made one of these examinations, to make the examination of several mines and have the various companies split the expense of the examination?

A. If I could, yes.

Q. And that's evidenced in numerous of these checks? A. Well, I presume so.

Q. No independent recollection—

A. No, sir.

Q. —but you presume so? A. Yes, sir.

Q. Now Mr. Allen of course has hired you on numerous occasions after you made the examination of Montana Leasing, is that correct?

A. Yes, sir.

Mr. Erickson: I think the questions are objectionable as plainly leading.

The Court: Just a moment; let the question be read, and I'll let you pass on it.

(Whereupon, the reporter read the last previous question.)

The Court: I'll let you decide whether it's leading [1024] or not.

Mr. Etter: I don't think so, under the theory that I have, your Honor.

(Testimony of Arthur Lakes.)

The Court: All right, you may answer it.

A. I did answer it.

Mr. Etter: What was the answer?

(Whereupon, the reporter read the answer to the last previous question, as follows: "Yes, sir.")

Q. But you were not employed on the original examination of the Neihart property by Mr. Allen?

A. I was employed by Mr. Keane on the original examination of the Neihart property.

Q. And you were paid by Mr. Keane?

A. I was paid by Mr. Keane.

Q. And is it your testimony that Mr. Allen never paid you or hired you?

A. That had nothing to do with the first testimony, because Mr. Allen did, and it's a known fact that he paid me at various times also for work on the Montana Leasing.

Mr. Etter: That's all.

#### Recross-Examination

By Mr. Erickson:

Q. Well, Mr. Lakes, Mr. Allen did pay you for some examinations on the Pilot and the Lucky Friday Extension?

A. As I testified, some months ago my recollection as to who paid me for the Pilot or the Lucky Friday Extension again [1025] means a statement that he did or he didn't; I'm under oath, and I've got to—

(Testimony of Arthur Lakes.)

Q. How about those \$100.00 checks?

A. Those \$100.00 checks were retainers, monthly retainers that I went up and made inspections of these properties by the month.

Q. On the Pilot Silver and Lucky Friday Extension?

A. Pilot and Lucky Friday Extension, and I mapped the Lucky Friday Extension every month while they were operating.

Q. And you did that at the request of the defendant Allen?

A. I did it pursuant to my occupation or my employment by the Lucky Friday Extension.

Mr. Erickson: That's all.

#### Redirect Examination

By Mr. Etter:

Q. And isn't it a fact that you made investigation of all of those properties pursuant to Mr. Allen's interest in the Gold Hunter, which was the central property up there?

Mr. Erickson: To which we object as leading.

Mr. Etter: You opened it up.

The Court: Just a moment; let me hear the question.

(Whereupon, the reporter read the last previous question.)

The Court: The objection is made that it's leading. I do not see how I can hold otherwise. Sustained.

(Testimony of Arthur Lakes.)

Q. (By Mr. Etter): Were you employed by Mr. Allen during the time [1026] of his interest in the Gold Hunter?

A. I was employed by Mr. Allen to make an examination of the Gold Hunter Mine, yes.

Q. And you had discussed with Mr. Allen—had Mr. Allen discussed with you the matter of the central development program in that area?

A. That was the objective of the examination of the Gold Hunter.

Q. And pursuant to the examinations in that area, did you make examinations of surrounding property at Mr. Allen's request?

A. Well, I had made examinations of most of these properties prior to the examination of the Gold Hunter. The acquisition of the Gold Hunter was one of the sequences of the plan of opening up the mines.

Q. And there were numerous people that had different plans for that, did they not?

A. I understand there were, yes.

Q. These reports you made on the surrounding properties were given to Mr. Allen, were they not?

Mr. Erickson: To which we object again as leading and suggestive.

The Court: Sustained.

Q. (By Mr. Etter): Did you make reports and return them to Mr. Allen on surrounding properties? [1027]

A. I made no report on the Gold Hunter, be-

(Testimony of Arthur Lakes.)

cause the operation didn't go far enough to make a report on it. I just made the examination and typed it.

Q. Did you make reports to Mr. Allen on the surrounding property?

A. Yes, sir, I made reports on the Hunter Silver Lead and various other operations up there.

Q. And Mr. Allen paid you for it?

A. Yes.

Q. And other people paid you for it?

A. Other people paid me, yes, for work I engaged in.

Mr. Etter: That's all, Mr. Lakes.

The Court: The jury will have its usual ten minute recess. I understand there is no further examination of Mr. Lakes, is that right?

Mr. Erickson: Well, I'd better wait, during the recess——

The Court: All right, you wait until after the recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

#### Recross-Examination

By Mr. Erickson:

Q. Mr. Lakes, did you receive some stock in the Lucky Friday Extension Mining Company from Mr. Allen in December [1028] and April, 1946, and March, 1947?

(Testimony of Arthur Lakes.)

Mr. Etter: I'm going to object to that question as being improper cross-examination, not gone into on direct, incompetent, irrelevant and immaterial.

The Court: Insofar as now appears, it's improper. Objection sustained.

Mr. Erickson: I would say it would go to the interest of the witness, receiving stock from the defendant.

The Court: You didn't ask that question.

Mr. Erickson: I asked him if he received his stock from the defendant in the Lucky Friday Extension Mining Company.

The Court: If that was the question I'm mistaken. Let me hear it, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

The Court: The ruling is reversed. I didn't notice that you said from Mr. Allen.

Mr. Etter: Exception.

The Court: Noted.

A. I have no recollection of receiving any Lucky Friday stock from Mr. Allen. I received 25,000 shares as part payment for an examination fee of the Lucky Friday Extension.

Q. And who paid you that?

A. Well, the company. [1029]

Q. Did Mr. Allen have anything—

A. I never received any certificates. The certificates were sold and put into my account.

Q. Who arranged the accounts for you?

(Testimony of Arthur Lakes.)

Mr. Etter: I'm going to object to that again as improper. He's already answered the question; I don't know why the matter has to be pursued. He says he didn't get any from Mr. Allen.

The Court: I'll sustain the objection; it's remote.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Lakes.

(Whereupon, there being no further questions, the witness was excused.)

J. T. HALIN

recalled as a witness on behalf of the defendant, resumed the stand and testified as follows:

Direct Examination

By Mr. Etter:

Q. Your name is J. T. Halin? A. Yes, sir.

Q. And you're the same J. T. Halin who testified here the other day? A. Yes, sir.

Q. Now, Mr. Halin, you stated that you're acquainted with Mr. Allen? A. Yes, sir.

Q. And I want to ask you, are you acquainted with John Sekulic? [1030] A. Yes, sir.

Q. Directing your attention to sometime in the early part of 1945, I will ask you whether or not you were in attendance at a cafe, I believe, in Wallace, I don't know, where the matter of the Lucky Friday Extension was being discussed?

A. Well, can I explain it to my own way?

Q. Yes. First, were you at the meeting?

(Testimony of J. T. Halin.)

A. Yes.

Q. Yes. Now, will you state——

A. Not at the meeting.

Q. Beg your pardon? You weren't at a meeting?

A. Not exactly any kind of a meeting; that was the Metals Bar.

Q. I see, you were at the Metals Bar?

A. Yes.

Q. And was the matter of the Lucky Friday Extension being discussed there? A. It was.

Q. And who was there at that time, Mr. Halin?

A. Well, my recollection there was quite a number of fellows there.

Q. Was John Sekulic there?

A. John Sekulic.

Q. Mr. Horning? A. Yes.

Q. Mr. Keane? [1031] A. Yes.

Q. And yourself? A. Yes.

Q. Mr. Allen? A. Yes.

Q. Anybody else that you can recall?

A. I think McDonald was there.

Q. Bob McDonald?

A. Bob McDonald, yes, he was there.

Q. And were there several others?

A. Several others, yes.

Q. Who brought that matter up, that is, the organization of the Lucky Friday Extension?

A. Well, that was happen in Mullan.

Q. It happened first in Mullan?

A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And who were you talking with in Mullan?

A. Well, I went over there and seen John Sekulic, and I was looking for some second hand pipe, and the matter came up, he and Keane, and John Sekulic mentioned, we were outside, right in front of his service station, he says, "You see this hillside here? Why not organize another mining company?" and that was all, didn't say anything about it, and I left on my way, and in the late afternoon I stopped at the Metals Bar, I was on my way to the hotel, and those [1032] bunch of fellows was going to organize a mining company, call it the Lucky Friday Extension.

Q. Who said that down there?

A. John Sekulic, and then a group of fellows going to put in \$500.00 apiece for start the company rolling, and I was invited also in the deal, but I refused. I tell them I didn't—I couldn't see my way to the deal, and I didn't put any money in it.

Q. Did John Sekulic say he'd put \$500.00 in?

A. I didn't see any money transaction, but they all agree.

Q. Was Mr. Allen there?

A. Mr. Allen was there.

Q. Did he say anything about putting any money in it?

A. I don't remember correctly, but I suppose he did, because the whole bunch, there was a quite a few, and they was all agree to put in \$500.00 apiece and start a company organized.

(Testimony of J. T. Halin.)

Q. But Mr. Sekulic proposed it?

A. He's the first one that mentioned the Lucky Friday Extension to me, in my knowledge.

Q. I see. Now, you likewise know Mr. Keane, who testified here, Clayton Keane? A. Yes.

Q. You know him?

A. Yes, acquainted with him in 1944. [1033]

Q. In 1944, and were you fairly well acquainted with Mr. Keane?

A. No, except I had some business with Mr. Keane in 1944.

Q. What was that business?

A. I loaned him some money on the Clayton Silver Mining stock.

Q. You loaned him some money?

A. Yes, sir.

Q. That was in 1944? A. Yes, sir.

Q. And you also had some business transactions with him in 1945, was it not, after the organization of the Lucky Friday Extension?

A. Well, that was later, when the Lucky Friday Extension was organized, that was maybe September or October, about September, I believe, I was in Mr. Keane's private office, and the thing come up, wanted to know if I was interested in buying any stock, then it takes a little time, then it was about October either 14th or 15th when I complete the deal.

Q. You completed the deal, you completed the deal with Mr. Keane? A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And all the negotiations having to do with buying the stock were made with Mr. Keane?

A. Except when the stock was—when I take the stock and I [1034] paid the money for it, Mr. Allen, at the Davenport Hotel.

Q. Mr. Allen gave you the stock, didn't he?

A. And I gave him a check for \$13,000 and \$7,000 in cash, for the purchase of the stock.

Q. You gave it to Mr. Allen, isn't that so?

A. I gave it to Mr. Allen.

Q. But you never made the purchase from Mr. Allen?

A. Not for that block of stock. Later on I bought some through Mr. Allen.

Q. Later on. Now, that later on when you got it from Mr. Allen, that was in exchange for some Silver Syndicate that you had? A. Yes, sir.

Q. You exchanged some stock?

A. Yes, sir.

Q. Directing your attention to possibly a week or ten days ago, did you at that time have a conversation with Mr. Denney, seated here, about the transaction having to do with the purchase of stock from Mr. Keane? A. Yes.

Q. And did Mr. Denney call at your house or did he call you on the phone?

A. Well, Mr. Denney talked me numbers of times in my own office, but then since this trial started I report here for a witness, and I meet Mr. Denney in office here on [1035] this floor.

Q. Did you have a talk with him a week ago or

(Testimony of J. T. Halin.)

so about this purchase that you made from Keane?

A. Since the trial started, you mean?

Q. Just before the trial started, a week or so before the trial started?

A. Well, Mr. Denney talked to me about that down at my office.

Q. And what did he talk to you about this purchase that you made from Keane?

A. Well, Mr. Denney, he took all my confirmations which I give to him a long time ago, and he still has them, all the confirmations, purchase of that stock.

Q. Well, did he say anything to you about your testimony with regard to the purchase of stock from Mr. Keane?

A. Well, there was something mentioned since the trial started, I believe it was last Thursday morning.

Q. All right, what happened then?

A. Well, Mr. Denney asked me to meet Mr. Keane and talk over the things before I'm called to the witness stand.

Q. Did he say what reason he had for that?

A. Well, reason so maybe make it better for the jury if we have an understanding, but I told Mr. Denney I don't want to see anyone and I don't want to talk to anybody until I get on the witness stand, because I have only one thing to tell. [1036]

Q. What did Mr. Denney say to that?

A. Well, Mr. Denney say, "I think you and Keane should get together, because if you get on

(Testimony of J. T. Halin.)

the witness stand they may make a fool out of you."

Q. Who may make a fool out of you?

A. I don't know.

Q. All right. Did you see Keane that morning?

A. No.

Q. While this trial was in progress?

A. Not that morning, no.

Q. When did you see him?

A. I believe Monday morning.

Q. Were you invited in again by Mr. Denney?

A. Yes.

Q. All right, and who was there then?

A. Denney and I was there alone, and a few minutes later Denney asked me to sit down, and he say he had something he wanted to go over with me, and a few minutes later Mr. Keane and Mr. Stocking and Mr. Erickson walked in.

Q. And what was said?

A. Well, they asked me about the questions about this purchase of this stock.

Q. The same thing that Mr. Denney had talked with you about earlier in the trial? What did they say to you, Mr. Halin?

A. Well, they was—I guess Denney asked me who I purchased [1037] that stock, and I tell him I purchase from Mr. Keane, and I think a few hot words went through, and I guess Clayton Keane called me a liar.

Q. What did you call him?

A. And I told him I didn't like to be called that,

(Testimony of J. T. Halin.)

because I don't have to lie for anybody, and I told him I can go anyplace in the world and look everybody square in the face, and I don't like that kind of language.

Q. You told this to Keane? A. Yes, sir.

Q. And that was the end of the conversation?

A. Yes, that was the end of the conversation.

Mr. Etter: That's all.

#### Cross-Examination

By Mr. Erickson:

Q. Now, Mr. Halin, you talked to Mr. Denney about this case quite a few times?

A. Quite a few times.

Q. You know Mr. Denney is a securities investigator with the Securities and Exchange Commission?

A. Oh, yes, and that's the reason I gave Mr. Denney all my records.

Q. By the way, Mr. Allen owes you about \$15,000 right now, doesn't he?

Mr. Etter: I'm going to object to that as improper cross-examination. [1038]

The Court: Overruled.

Q. Does he owe you about \$15,000 now?

A. Yes, but that is—

Q. Well, you've answered the question. Now, Mr. Denney at no time ever told you to tell anything but the truth? A. No.

Q. He told you to stick to the truth at all times when he's talked to you? A. Yes.

(Testimony of J. T. Halin.)

Q. And your memory has been kind of hazy about most of these details, hasn't it? A. No.

Q. Have you remembered every detail in connection with all your stock transfers?

A. No.

Q. Well, then, your memory has missed certain details of what's taken place in all your multitude of stock transactions?

A. Yes, like the stock certificate numbers and so forth I never tried to keep track.

Q. And Mr. Denney was merely trying to refresh your memory so you could get straightened out in your own mind as to what did take place?

A. Maybe so.

Q. And he at no time in the office gave you a story to tell the [1039] jury or anything of that nature, did he?

A. No, only Denney asked me—

Q. Didn't he make some schedules, trace some certificates for the purpose of aiding you in refreshing your memory and recollection?

A. On the number of the certificates, yes, which you have the letter on it, I think.

Q. And didn't you first tell Mr. Stocking and Mr. Denney in your office in Spokane here that the first dealings were with Allen on the Lucky Friday X and the Pilot stocks? A. I don't think so.

Q. You don't recall telling them that, if you did? Didn't you tell them that first, and then say that you had recalled differently when you re-

(Testimony of J. T. Halin.)

fresned your recollection on the facts? Didn't you make that statement first and then think the matter over and change your statement later? A. No.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Halin.

(Whereupon, there being no further questions the witness was excused.)

W. J. EMACIO,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please? [1040]

A. W. J. Emacio.

Q. And where do you live, Mr. Emacio?

A. Wallace, Idaho.

Q. How long have you lived up there, Mr. Emacio? A. 45 years.

Q. 45 years; and at the present time what is your occupation, sir?

A. I'm manager of the White and Bender Finance Company.

Q. And likewise are you associated with any mining companies?

A. Yes, sir, secretary and treasurer of the Lucky Friday Silver Lead Mines Company, Wallace.

Q. And have you certain records with you, Mr.

(Testimony of W. J. Emacio.)

Emacio, in response to a subpoena duces tecum?

A. Yes.

Q. And as secretary-treasurer of the Lucky Friday Silver Lead Mines do you have custody of those records? A. Yes.

Q. And is it your job as secretary-treasurer to keep an accurate account of the information shown in those records? A. Yes.

Q. They have been in your custody since you've been an officer? A. Yes.

Q. And are the official records of the company?

A. Yes.

Q. I'll ask you, Mr. Emacio, if since you were subpoenaed you [1041] have taken occasion to refresh your recollection on the financial position of the Lucky Friday Silver Lead Mines in the year 1945? A. Yes, I have.

Q. Can you tell us, Mr. Emacio, what the financial condition of the Lucky Friday Silver Lead Mines was on about May of 1945?

Mr. Erickson: To which we object as incompetent and immaterial to any of the issues in this case, what the condition of another mining company was in 1945.

The Court: This is of the Lucky Friday, known as the Big Friday?

Mr. Etter: That's correct.

The Court: I think I'd better excuse the jury. The jury is excused.

(Testimony of W. J. Emacio.)

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I am assuming that one of the contentions of the defendant is that the defendant in 1945 was not interested in the Extension, but that he was interested in the hope that the entire area which included where the Extension is located and where the Big Friday and the Gold Hunter, I think it is, and others were located, should be embraced in a central development project, and in connection with such contention I'm assuming that it is another contention of the defendant that such interest or contacts as he had with any plans or contracts involving the Extension or involving acquisition of property of the Extension was because of his larger interest, and I'm assuming that a further contention of the defendant is that such further interest as he had in this development through the Big Friday was because he was anxious that the Big Friday itself did not get all of the benefit, that he wanted the larger area to get it. My assumptions are not far afield, are they, Mr. Etter?

Mr. Etter: No, some of those assumptions are correct. We were in a big development program, but we weren't—

The Court: Now, the defendant is not to be precluded from either by himself or by other witnesses supporting his contention. It will be true, of course, that if the jury becomes convinced be-

(Testimony of W. J. Emacio.)

yond all reasonable doubt that Mr. Allen in connection with the Extension had done the things charged, that then he's guilty irrespective of the fact that he might also have been interested in the central development project. One is not necessarily exclusive of the other. It will be his position, I take it, that his interest at the time it is alleged the conspiracy was formed and flourished, that his interest was confined to the central development project, so on [1043] that theory of the defendant the defendant is entitled to submit evidence, although the jury is to be told that the establishment of the defendant's interest in the central development project does not relieve the defendant if the evidence further establishes that he was likewise guilty as charged with respect to the Extension.

Now, it's a little bit more difficult for me to understand the theory of the Big Friday's financial situation as a defense in this action. Assume the Big Friday was worth a great deal, or assume the Big Friday was badly insolvent, either one, what difference does it make here?

Mr. Etter: Well, it makes the greatest difference in the world, if I might suggest, your Honor, if the Big Friday was at a point where they couldn't sink a shaft or do any development work, and were without funds to proceed with mining work, and some of their officers was active, John Sekulic and others, in the promotion of the Lucky Friday Extension and the promotion of working contracts

(Testimony of W. J. Emacio.)

between the two of them and to enable them to use the money. It's a question of whether anything would motivate Allen to enter into a conspiracy to develop the Extension when as a matter of fact the condition of another company made it imperative to do something, and it will be shown that their interest and efforts in organizing the company not only built up their treasury, but raised their stock, and every benefit that occurred from the development of the Extension occurred to the Big Friday and not to the defendant Allen.

The Court: Well, let's assume all that's true. It's the theory of the government's case that whether the Big Friday was or was not profiting, that Mr. Allen and Mr. Keane intended to divert so much of the monies of the Extension as weren't paid to the Big Friday, to divert it so that it would come to their benefit. It's been conceded by the government's case that the Extension did pay the Big Friday a certain amount of money for putting in the shaft, which was more for the benefit of the Big Friday than it was for any other company. The question here is not whether or no the Big Friday wanted the Extension. The question is not here whether or not the Big Friday needed money. The question here is whether or not Mr. Allen and Mr. Keane planned to use the balance of the money that the Big Friday didn't get, insofar as they were able, for unlawful purposes.

(Testimony of W. J. Emacio.)

Mr. Etter: That's correct.

The Court: Now, it is conceded that the Big Friday got some money. It's conceded that that shaft was more for the benefit of the Big Friday than any other concern in that district. Now, what difference does it make [1045] whether the Big Friday in May of 1945 was sufficiently in debt that it couldn't sink a shaft itself? I'm asking you, what difference does it make?

Mr. Etter: The attempt has been made here and is being made all through the government's case to show as far as the defendant Allen is concerned in this case that he had to do what the government says he planned and conspired to do, to bail himself out. Now the question is, who was bailing out who? Was Allen bailing himself out, or was the Big Friday bailing themselves out with this promotion, and along with that, the testimony of the defendant Keane is that the defendant Keane was on the board of directors of the Big Friday at the same time that this occurred.

The Court: That's already in evidence.

Mr. Etter: Yes, it's in evidence, and the defendant Keane in testifying for the government was attempting to show that it was some benefit he had that accrued to Allen. His motive of course, I think is obvious, and we have a right to comment on it later as we did to inquire into it. If the proof of Mr. Allen would show there was no necessity or occasion for bailing out in the Montana Leasing in view of the money he was putting in and

(Testimony of W. J. Emacio.)

the money Keane was allegedly putting in from Independence, that there was no necessity, and we were not allowed to [1046] show the interest that Keane had in the Big Friday and that certain men in the Big Friday had in the development of the Extension, it absolutely precludes to be able to determine from the facts whether or not Allen had to bail out because he was an instigator and promoter of the Extension, or whether, as a matter of fact, it's an incident to show he was not a conspirator or promoter of the Extension, but was concerned with the central development program and his Neihart property, and if as a matter of fact the primary reason for promotion didn't rest with the officers of the Big Friday and their financial condition at that time. Now, that's our position.

The Court: Well, counsel, the fact that the Big Friday needed to be bailed out is not a defense if Mr. Allen and Mr. Keane coincidentally with such bailing out decided to benefit themselves—

Mr. Etter: I concede that, your Honor.

The Court: —illegally. I don't think there's been any contention by the government that the only persons who would benefit by the Extension were Mr. Allen and Mr. Keane. The jury will necessarily be told that the fact that other persons may have benefited by it or may have been greatly interested in it makes no difference. As a matter of fact, it makes no difference, as I see it, whether Mr. Allen and Mr. Keane were the ones who first

(Testimony of W. J. Emacio.)

conjured up the theory of the Extension or whether John Sekulic was the man who first planned it. Mr. Keane and Mr. Allen either themselves imagined the Extension, or whether they climbed aboard someone else's vision, they still are guilty if before the mails were used they had the understanding between themselves that they would do what the government charged they agreed to and did do. Mr. Grismer of course says that it was a sort of a combination vision, and he's supported in that by Mr. Halin. Mr. Grismer was a government witness. Mr. Keane, another government witness, seems to think that no one had the imagination other than himself and Mr. Allen, but I'll have to tell the jury that it doesn't make the slightest bit of difference.

Mr. Etter: Your Honor, I agree with you on the instruction and everything you've said, that the jury is properly instructed, as your Honor says, that it wouldn't make any difference if counsel was in the deal and profited from the beginning, if as a matter of fact the defendant and these people conspired to do what they did do, but I do say that is a matter of proper instruction to the jury, but Mr. Allen is entitled to be able to show these very facts so that the jury can determine, your Honor, whether or not his interest was such in it that the inference that followed, if there were inferences from which they have to [1048] deduce a feeling of guilt or a verdict of acquittal. They have to determine that from other facts. If the

(Testimony of W. J. Emacio.)

evidence is excluded and all the jury knows is what Mr. Allen did, of two or three things in connection with the Big Friday, and they don't know anything of Big Friday, the jury might take the position that the Big Friday and its officers were the sole promoters and organizers, but they can't take it or consider it if the evidence is excluded, which puts the Big Friday right in the middle of this thing to start in, mind you, after the thing was commenced, so-called, but before there was any inception of any alleged conspiracy.

Now the question is, Mr. Allen is charged with being a hidden promoter and organizer; he's been accused by Mr. Keane, as you say, of having the imagination. The question is, is that so, or is it not so? Hasn't the jury the right to know all the facts that are material, particularly where there's a contractual binding between the Big Friday and the Extension? Mr. Allen talking to Grismer, Mr. Grismer dealing with the Big Friday, Mr. Keane on the board; they have a right to determine who had the motive and whether it was good or bad, whether it was associated with the promotion on Allen's part of the Extension or the development program, and likewise whether it was associated with the Big Friday and developing [1049] the Extension, and following that, to look where the profit went. What if Allen can show he made no profit, and he wasn't part of the conspiracy? If he was able to show that, it may be entirely proper

(Testimony of W. J. Emacio.)

and possible that he can't show that to the jury unless he can in effect show that he wasn't a promoter and show affirmatively that these people were and that these people were in it before he heard of it, actively participating. I think those factors are all something the jury should consider, under your Honor's instructions. I think your Honor is entirely correct in saying that they should be cautioned about those things, but I feel very earnestly so far as my client is concerned that they have a right to consider those facts.

The Court: I excused the jury for two reasons. One, I to a degree wished to verify some of my assumptions as to the defendant's position. One, because I wished to make it clear to counsel that if certain evidence was introduced, that they should expect that the jury would be advised that regardless of how many other things may have transpired, if the conspiracy was one of the things that was occurring, that the defendant is guilty if the evidence so shows beyond all reasonable doubt. I had a further reason. Counsel has for a number of days been cross-examining. He's permitted on cross-examination to employ [1050] the strategy of the leading question, because he was cross-examining the witnesses called by Mr. Stocking or Mr. Erickson. He started in on the defense. Counsel is much like the man who had been driving in the country for a long distance and comes into the city and forgets the speed limits, and I'm very anxious that

(Testimony of W. J. Emacio.)

counsel avoid the use of leading questions. I'm not blaming counsel; when I tried cases I found sometimes that I was in the same position when I changed from cross-examining to handling my own witnesses I forgot and did what counsel has been doing. Mr. Erickson and Mr. Stocking of course on cross examination are to have the privilege of leading questions which Mr. Etter and Mr. Emigh did have, and therefore I'm most anxious that the defense counsel now avoid leading questions. I'm going to permit this matter to be developed to a reasonable degree, giving the jury such advice at the present moment as I deem appropriate. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: The objection to the last question put to the witness is overruled. The jury will be allowed to hear the testimony for such assistance if any as such may be to the jury in determining what the true facts are. The [1051] jury will be advised now, however, that in the event the evidence when it's all considered convinces the jury beyond all reasonable doubt that Mr. Allen was guilty of one or more of the counts charged against him, then it will be the duty of the jury to convict Mr. Allen as to such count or counts, regardless of whether or not Mr. Allen may or may not at the same time as having been engaged in the offenses charged was

(Testimony of W. J. Emacio.)

interested in a central development program, and if the jury is convinced beyond all reasonable doubt from the evidence that Mr. Allen was guilty of one or more of the counts charged, then it will be the duty of the jury to convict Mr. Allen of such, even though the evidence may establish that the Big Friday was as much or more interested in the Extension than Mr. Allen, and even though it may be established that the Big Friday gained a great deal more benefit than any benefit Mr. Allen obtained. However, you may listen to this testimony about the Big Friday for such assistance if any as it may give you in determining whether or not Mr. Allen is guilty of the offense charged, and if after you've heard all the evidence you have a reasonable doubt of Mr. Allen's guilt as to any count, it is your duty to vote not guilty as to that count. You may proceed.

Mr. Emigh: May it please the Court, may we have an exception to the statement of the Court, as being in [1052] the nature of an instruction to the jury before the evidence is in.

The Court: What I have said to the jury is for the purpose of helping the jury understand that it's to hear all the evidence for such aid as it may be to the jury in determining the guilt or innocence of the defendant. After the evidence is all in and the argument has all been made the Court will instruct the jury as to the law. The defendant excepts, and objection is noted, and exception. You

(Testimony of W. J. Emacio.)

may proceed. I do not understand that you're objecting that what I've said is not the law, but you're objecting that it's premature?

Mr. Emigh: As to whether or not it is timely.

The Court: All right, you may proceed.

Mr. Etter: Read the last question.

(Whereupon, the reporter read the last previous question, as follows: "Can you tell us, Mr. Emacio, what the financial condition of the Lucky Friday Silver Lead Mines was on about May of 1945?")

A. Well, the way we kept our books, we were in development stage, and we had no closing, we never closed our books up to that date; all I can give you up to that time would be our bank balances.

Q. All right.

A. I say, I can't give our exact figures as to our finances [1053] other than our bank balance, due to the fact we were in development stage, and did not close our books; they were kept open. On May 31, 1945, \$7,997.00 in the bank.

Q. That was May 31?

The Court: How much?

A. \$7,997.93.

Q. And on that date what were the unpaid obligations of the company?

A. Well, it's pretty hard to state at that date, but we owed all the current bills for the month of May.

(Testimony of W. J. Emacio.)

Q. And what would those be, offhand?

A. I'd say possibly half of that.

Q. In other words, in the neighborhood of \$3500.00; and what was the condition in June?

A. June 30, 1945, we had \$2807.34.

Q. \$2800.00? A. Yes.

Q. And what unpaid obligations, if you know?

A. About the same amount, I'd say.

Q. About half? A. Yes.

Q. And what was the situation in July?

A. We had \$3,974.59.

Q. I didn't hear that, Mr. Emacio.

A. \$3,974.59. [1054]

Q. And the corresponding ratio, would you say, of obligations? A. Yes.

Q. And in August, please? A. \$2,309.97.

Q. And a corresponding obligation of about half, would you say?

A. I'd say approximately all.

Q. And in September?

A. That was as far as it went.

Q. That was as far—

The Court: What was that?

A. That's as far as my notice called for, just through the month of August.

Q. Now, is it true that on May 31, 1945, the \$7,997.93 that you've testified to, wasn't that a loan from the directors to the corporation?

A. In May, you say?

Q. Yes. I'll put it this way. Just immediately

(Testimony of W. J. Emacio.)

prior to the figure that you've given us, Mr. Emacio, did the board of directors loan or did they guarantee the loan of \$10,000 to the company?

A. Yes.

Q. They did, and these figures that you've given here, had the loan been paid back at that time, in May, June, July or August? [1055]

A. No, it hadn't.

Q. It had not been; it was then an obligation of the company.

The Court: CoCounsel, how long do you think the testimony of this witness will take?

Mr. Etter: I'm through.

The Court: Counsel, how long do you think the testimony of this witness will take?

Mr. Erickson: Three or four minutes, perhaps.

The Court: All right.

Mr. Etter: That's all, Mr. Emacio.

#### Cross-Examination

By Mr. Erickson:

Q. Mr. Emacio, do you know the defendant in this case, Mr. Allen? A. Yes, I do.

Q. And do you know whether or not the Lucky Friday—what the Lucky Friday sources of money were during these development months of June, July and August, 1945?

A. I think during that time we had one shipment, and a loan from John Sekulic.

Q. Was the mine in production at that time?

(Testimony of W. J. Emacio.)

A. We had one shipment during that period of time.

Q. And when was that shipment made, just approximately?

A. In August, we received the returns in August.

Q. And how soon was the contemplation of the directors that [1056] the mine would be in production? How soon in these months in June, July and August did the directors assume that the mine would be in production?

A. Well, at that time we had just completed our shaft down to the ten hundred, and the next shipment, we didn't know when to expect it, but the next shipment we had was in February of '46, nothing in between.

Q. During the time that the shaft was being sunk from the ground to the one thousand foot level, the directors never contemplated any shipments during that period, is that correct?

A. From where?

Q. During the time the shaft was sunk, the directors never contemplated any revenue from the mine during the sinking of the shaft?

A. You mean from the ten hundred to the fourteen hundred?

Q. No, from the ground to the ten hundred.

A. That was the only way we could sink it, was by returns.

Q. You got the ore to pay, then, as you went down, from the sinking of the shaft?

(Testimony of W. J. Emacio.)

A. That and by loaning, borrowing.

Mr. Erickson: Well, I believe that's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.) [1057]

The Court: Counsel, is there any reason when you speak of the Lucky Friday you shouldn't call it the Big Friday, to differentiate it from the Extension? It's very easy for you gentlemen when you just speak of the Lucky Friday to know that you're speaking of the Big Friday, the company that was already established, but I would ask you at least to consider that for the sake of the jury and myself. All right, we'll be at recess until 1:35.

(Whereupon, at 12:05 o'clock P.M. the Court took a recess in this cause until 1:35 o'clock P.M.)

(All parties present as before, and the trial was resumed.)

### B. W. PORTER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. B. W. Porter.

Q. Mr. Porter, I'm going to ask you to speak

(Testimony of B. W. Porter.)

out loud enough so that all the members of the jury and counsel can hear you. Where do you reside, Mr. Porter? A. Seattle, Washington.

Q. How long have you resided in Seattle, Washington? A. Since 1922.

Q. What is your business, Mr. Porter?

A. I'm in the mining business. [1058]

Q. You're in the mining business?

A. That's right.

Q. How long, Mr. Porter, have you been in the mining business? A. Since 1933.

Q. And will you state what your connection with mining has been, in what capacity?

A. Managing and financing.

The Court: Manager and what?

A. Managing and financing mines.

Q. Can you tell us, Mr. Porter, some of the mines that you have managed, or the enterprises?

A. The Silver Wreath Mine at Mullan, Idaho, since 1933, and from that I moved down to the Goldstone Mine at Salmon, Idaho, since 1943, and at the same time took on the War Eagle Mine at Salmon, Idaho, in 1943.

Q. And are you associated with those mines at the present time, Mr. Porter?

A. Very much so, yes.

Q. Will you state whether you are acquainted with the defendant, Mr. Allen?

A. Yes, I've known Mr. Allen since about, I think maybe about 1943.

(Testimony of B. W. Porter.)

Q. And are you acquainted with Mr. Francis Clayton Keane?

A. He's been my attorney off and on in Wallace since 1936.

Q. Since when, sir? [1059] A. 1936.

Q. You say he has been your attorney?

A. Yes, sir.

Q. And what particular kind of legal services has he performed for you?

A. Well, he drew up contracts for leases for me; he helped me file or refile on certain properties up there, staking claims, and then in 1946 I hired Clayton Keane to organize the War Eagle Mining Company and the Goldstone Mining Company.

Q. The War Eagle and the Goldstone?

A. That's right.

Q. And pursuant to that employment will you state whether or not Mr. Keane did organize those mining companies?

A. As far as I know he organized them, but he never completed them, and after oh, I don't know how many attempts to get the papers out of his office so that I could complete them, I gave up in disgust and took it to my attorneys Wetrick, Flood & O'Brien in Seattle, and they formed the present War Eagle Mining Company for me and the present Goldstone Mining Company.

Q. I see; now, at the time that you employed Mr. Keane to first organize these companies, was there a board of directors?

(Testimony of B. W. Porter.)

A. My board of directors, and I was never asked about the [1060] board, the companies that Keane formed—I may have to explain that; he said that he formed the companies, but he didn't give me any of the records, so I don't know what he did in the way of directors, but my directors in the beginning, since 1943, they have always been Dr. Edwin Le-Cocq of Seattle, and Emil Mottman is my secretary, he's the owner of the Mottman Department Store in Kelso and the vice president of the Cowlitz National Bank in Kelso, and even before the company was owned that was the board.

Q. Now, did you ever have any other transactions with Mr. Keane?

A. Well, yes, I've had a lot of transactions with Mr. Keane; what do you refer to?

Q. Well, other than a client-attorney relationship?

A. Well, I borrowed \$7800.00 from him.

Q. I see. When was that, Mr. Porter?

A. May 23, 1946, I think, but we'll check that if you wait a minute.

Q. You're using that to refresh your memory?

A. Yes, because I'm just guessing. The first deposit was made May 23, 1946, so the loan was negotiated probably a few days prior to that.

Q. What were the circumstances surrounding that loan, Mr. Porter?

A. Well, I asked him to organize the War Eagle

(Testimony of B. W. Porter.)

Mining Company, [1061] and I asked him for a loan of \$10,000, and it was understood that he would organize the War Eagle Mining Company so that I could go through the mails, in other words, S.E.C. it, and get it ready, and out of those funds I'd pay him back this loan. In addition to that I don't mind saying I told Mr. Keane I would take care of him out of my stock, but I didn't know how much stock I would get out of the deal.

Q. And did you negotiate the loan in accordance with your testimony?

A. Well, it didn't work out that way. I assumed there was \$10,000 in the bank, because I wrote the checks; understand, I never had these records. Mr. Keane would make the deposit and the bank statements were sent to his office, and I got them after we terminated this deal.

Q. Well, Mr. Porter, did you keep any of the records yourself?

A. What do you mean by that?

Q. Having to do with—

A. No, as I wrote the checks they all went to Mr. Keane's office. I wrote the checks and then they went to Mr. Keane's office, and how I got these back, August 26 or thereabouts I went into the bank, and Mr. Hannah, the cashier, said "You got here just in time; you had a \$100.00 overdraft, but I met Mr. Keane on the street and he gave me \$100.00 out of his pocket to cover it." Now, I had in [1062] that same bank another account under the name of

(Testimony of B. W. Porter.)

B. W. Porter that at that time had several thousand dollars in it, so I was disturbed when the bank told me I was overdrawn \$100.00, because I knew I hadn't used this \$10,000, so then I called Clayton Keane and we terminated this deal and from then on I used my own funds, so we never did get up to the \$10,000, but I thought at all times there was \$10,000.00 in the bank, and I was writing checks against the \$10,000.

Q. And what did the condition of your bank account reflect?

A. Well, here it is right here.

Q. Referring to it to refresh your recollection, what did your bank account indicate after you got that statement?

A. Well, it indicated that every time I'd write a check he'd run down and cover it, because the last check I wrote was \$35.49, and the last deposit was \$35.49, so evidently he'd run down to cover each check, so then, to get it all on the record while I'm on this check business, I called Mr. Keane not once but half a dozen times and asked him who I owed this money to, and he says "Frankly, Ben, I don't know" then finally I got a letter from Mr. Keane stating that I was to pay this money over to a board of trustees, and I turned that over to Mr. Wetrick of Wetrick, Flood and O'Brien, and it's being handled there at this time.

Q. Now, Mr. Porter, during the time that you negotiated this [1063] loan with Mr. Keane, did you discuss the matter with Mr. Allen?

(Testimony of B. W. Porter.)

A. Never did, and had no occasion to.

Q. Did you at any time from the beginning of the loan to the incidents closing it that you've disclosed talked to Mr. Allen?

A. Well, I've talked to Mr. Allen for years.

Q. About this loan?

A. No, never about this loan.

Q. And did Mr. Allen so far as you know have anything to do with your securing the loan?

A. To my knowledge he didn't, and this one check here I think will answer your question. In Montana I borrowed \$560.00 from Allen, because I needed some money for Salmon and I didn't know anyone in Butte, and he cashed a check for me. I gave Mr. Allen a check to the Lexington Mining Company, which I have here, for \$560.00. When I got this all back from Keane, as I say, I never terminated this until we terminated the whole thing, and I got back that \$560.00 check I had given Mr. Allen, and it came back N.S.F., but on Mr. Keane's statement he says "War Eagle, covered from Lexington in June, \$560.00" which does not reflect on War Eagle's statement; in other words, I had to add this to the amount I owed which was deposited, so I did.

Q. Now, who were the owners of the War Eagle property, Mr. [1064] Porter?

A. Well, the same owners that there were then; we have this on a lease, you see; Smoky Harris, I say Smoky because that's the only name he goes by; William Doebar, and Mrs. William Gies, who lives

(Testimony of B. W. Porter.)

in Spokane, they own the War Eagle; the Goldstone is owned entirely by Mrs. Isadore Gies, and I have those properties under lease and bond, but we don't own them, we still have that payment.

Q. Has Mr. Allen any interest in the War Eagle property?

A. No, nor neither does Mr. Keane.

Q. Did either Mr. Allen or Mr. Keane ever have any interest?

A. They certainly did not. As I told you in the beginning, if Mr. Keane had formed the companies, got them cleared through the S.E.C., I would have paid back this loan and given him some stock.

Q. But he did not become any owner?

A. Never.

Q. Neither did Mr. Allen?

A. Never. They haven't got a share.

Q. Are you acquainted with John Sekulic?

A. Very well, known him for years.

Q. How long did you know him?

A. I got acquainted in 1941 when I was developing the Silver Reef Mine.

Q. Is that property known by that name today? [1065]

A. No, it's the Hunter Silver Lead today; they have a lease on it.

Q. You say you became well acquainted with him at that time?

A. That's right, borrow tools, swap back and forth, and I've known him very well.

(Testimony of B. W. Porter.)

Q. Have you had any discussions with Mr. Sekulic about mining properties in that area?

A. Yes, I've discussed practically every mining property in that area with John.

Q. Have you discussed with him the formation of any companies during the time that you've known him up there?

A. I wouldn't put it that way; he's discussed with me the formation of companies; I've never discussed it with John that way.

Q. And what companies has he discussed with you?

A. Well, he wanted me to organize and develop the property adjoining his Lucky Friday, as early as 1943, possibly 1942, and—

Q. And what—pardon me.

A. —to get the picture clearly before all of you, we were in John's kitchen in 1943 or 1943, and he pointed out the window, he says "Ben, I own that ground, and have for years; why don't you promote a company and organize it?" I says "John, I can't handle what I've got" but that was John's suggestion on that property. [1066]

Q. Do you know whether or not that property has now become—

A. That property today is the Lucky Friday Extension.

Q. And was that the only time, Mr. Porter, that he discussed that matter with you?

(Testimony of B. W. Porter.)

A. No, I think that was discussed many times.

Mr. Etter: That's all.

### Cross-Examination

By Mr. Erickson:

Q. Mr. Porter, are you indebted, or is Mr. Allen indebted to you now at the present time?

A. Yes, he owes me \$700.00.

Q. And you're interested in helping him any way you can in this lawsuit?

A. I wouldn't state it that way, any more than I'd help anybody else. If Mr. Keane was here I'd tell just exactly what happened, if that's help.

Q. Now, Mr. Porter, did you receive some stock in the Lucky Friday Extension Mining Company to the extent of 95,000 shares?

A. Did I receive 95,000 shares?

Q. Yes. A. No, sir.

Q. Did you receive any stock in the Lucky Friday Extension Mining Company from Mr. Grismer?

A. Not a share.

Q. Or any stock in the Lucky Friday Extension Mining Company [1067] from any other person?

A. Yes, you bet.

Mr. Etter: Just a minute; I'm going to object to that as not being a proper question; he stated he didn't receive any from the defendants, now he wants to know if he received it from anybody. I think it's wholly incompetent, irrelevant and immaterial, unrelated to the direct examination, incompetent, irrelevant and immaterial to prove or

(Testimony of B. W. Porter.)

disprove any issue in this case, whether he got it from anybody.

The Court: Let me hear the question.

Mr. Erickson: I'll withdraw the question and ask a more specific one.

The Court: All right.

Q. (By Mr. Erickson): Mr. Porter, did you receive some stock in the Lucky Friday Extension Mining Company which you sold through Pennaluna and Company?

Mr. Etter: I'm going to object to that question as being incompetent, irrelevant and immaterial, as to whether or not Mr. Porter ever purchased any Lucky Friday Extension stock on the open market or from other people, and unless the question is confined to whether or not he purchased any from Mr. Allen or any other defendant, as being incompetent, irrelevant and immaterial to any issues in the case, incompetent to prove any issue against the [1068] defendant Allen, and improper cross-examination.

The Court: This is cross-examination, and I assume is intended as a preliminary question relative to such interest, if any, as the witness might have. The objection is overruled.

Mr. Etter: Exception.

The Court: You may read the question, Mr. Taylor; the witness may answer.

(Whereupon, the reporter read the last previous question.)

(Testimony of B. W. Porter.)

A. I personally did not.

Q. Did anybody acting as your agent receive such?

Mr. Etter: I'm going to object to that question. If it's preliminary, it's indicated now that there's certainly no connection; "Did anybody acting as his agent purchase such"; I'm going to object on the same ground as previously made.

The Court: I'll sustain the objection to that question.

(Whereupon, two checks were marked Plaintiff's Exhibit No. 123 for identification.)

Q. (By Mr. Erickson): I hand you Plaintiff's identification 123, two checks, the first check being a check from Pennaluna and Company dated April 3, 1947, for \$1400.00 addressed to B. W. Porter. Did you receive that check and endorse it? [1069]

A. Yes. These were both sold through my account by Jim Allen as a favor, and he used my account to sell them.

Q. You gave Mr. Allen permission to use your account to sell this stock? A. That's right.

Q. And this represented 95,000 shares of Lucky Friday Extension?

A. I didn't even know what the transaction was. He wanted the money for the payroll and wanted to use my account, and I let him use it.

Q. That's the only transaction you had with Pennaluna and Company on Lucky Friday Extension stock, is it not?

(Testimony of B. W. Porter.)

A. As far as I know that's it.

Q. And what did Mr. Allen say the reason was that he wanted to use your name in disposing of this stock?

Mr. Etter: I'm going to object as improper cross-examination, not within the issues in the case, and certainly not material or relevant so far as any issue made against the defendant Allen is concerned. The government has shown in here that the stock was sold; this is just twice proving. We admit that the stock was sold. It's incompetent and irrelevant and improper cross-examination, not brought out on direct, not concerned with any issue on direct.

The Court: How is this proper cross-examination? [1070]

Mr. Erickson: This will tend to show the interest of the witness with the defendant Allen, and will ultimately tie in with the sale of the Grismer stock, 1,229,700 shares issued to Grismer that found it's way through Allen and was sold through Pennaluna and Company.

Mr. Etter: It's already in here.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: You may read the question, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

(Testimony of B. W. Porter.)

A. He wanted to raise some money for the payroll.

Q. Well, did he say why he didn't want to use his own account?

Mr. Etter: Object to that as incompetent, irrelevant and immaterial and repetitious; it's already been answered.

The Court: Overruled.

Mr. Etter: Exception.

A. I didn't get the question; what was it?

Q. Did he tell you why he didn't want to use his own name in his own account to sell this stock?

A. He didn't tell me, and I didn't ask him.

Q. So that when you got the checks, then, you immediately endorsed them over to the Lexington Silver Lead Mines account, the second \$5,000 check, and the other check was [1071] deposited to your account, the \$1400.00 check, wasn't it?

A. I guess it was.

Q. In Seattle? A. That's right.

Q. So that the \$1400.00 check never went to Mr. Allen, then?

A. Well, yes, I'll say this, that there's lots of checks went to Mr. Allen.

Q. The proceeds from this \$1400.00 check didn't go to Mr. Allen?

A. Well, now, I'd have to go back into my records and see where that went. I frankly don't know.

Mr. Erickson: I offer 123.

Mr. Etter: Objected to on the ground that

(Testimony of B. W. Porter.)

they're incompetent, irrelevant and immaterial to prove any issue in this case, that it is improper cross-examination and brought in by improper cross-examination not brought out on direct, no proper foundation laid for the presentation of the checks to go to prove any issue in this case, and lead the jury to conjecture.

The Court: Let me see it. Overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 123 for identification was admitted in evidence.)

Mr. Erickson: These are two checks, the first check being for \$1400.00 by Pennaluna and Company to B. W. [1072] Porter, and endorsed on the back "For deposit only, Seattle First National Bank, Main Office, B. W. Porter". The second check is to B. W. Porter for \$5,000 dated April 9, 1947, by Pennaluna and Company, and endorsed on the back "B. W. Porter, deposit to account of Lexington Silver Lead Mines, Inc.".

(Whereupon, three checks were marked Plaintiff's Exhibit No. 124 for identification.)

Q. (By Mr. Erickson): Mr. Porter, I'll hand you Plaintiff's identification 124, the first being a check dated May 9, 1946, payable to B. W. Porter, signed by the Lexington Silver Lead Mines Company, by J. A. Allen, and ask you what that's for?

A. I don't know.

Q. Did you receive that check?

(Testimony of B. W. Porter.)

A. I evidently did, if I endorsed it. Let me see the endorsement. That's probably right.

Q. Benevolent and Protective Order of Keglers endorsement appears on it; that's evidently where it was cashed, is that correct?

A. I would assume that.

Q. I hand you the second check dated October 30, 1946, payable to B. W. Porter for \$125.00 on the Lexington, signed by J. A. Allen, and endorsed on the back "B. W. Porter"; is that your signature? [1073] A. That's right.

Q. What did you receive that check for?

A. Well, I've advanced Mr. Allen considerable money over the past few years, and I suppose he paid me back.

Q. With a Lexington Silver Lead Mines check?

A. I don't know what he paid me back with, just so he paid me.

Q. I'll hand you the third check, dated July 1, 1946, to B. W. Porter for \$95.00 signed by the Montana Leasing Company, J. A. Allen, and endorsed on the back "B. W. Porter" and ask if that's your signature? A. That's my signature.

Q. Do you know what that check is for?

A. I had probably given him some money and he paid me back.

Mr. Erickson: I offer 124.

Mr. Etter: I object; I don't think that they're competent to prove any issue made in this case; irrelevant.

(Testimony of B. W. Porter.)

The Court: Overruled; admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 124 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Does Mr. Allen have a connection with the Hunter Silver Lead Company?

A. Yes, he has.

Q. Did he have at the time these dealings were going on? [1074]

A. That's what started our dealings.

Q. Who were the people that made up the ownership of the War Eagle Mines, you and who else?

A. Oh, I'd say five or six other people.

Q. Was Mr. Allen one of those?

A. No, sir; never has been.

Q. What arrangement did you make on behalf of the War Eagle Mines to borrow from Keane?

A. That Mr. Keane would organize a corporation, that this money would be paid back to him, and that I would take care of Mr. Keane along the way when I knew what I was going to get out of it.

Q. How much were you to borrow from Mr. Keane?

A. It states right here I think it's around \$8,000.

Q. And how much did you get from the promised \$8,000 loan, or the War Eagle Mining Company get?

A. You mean from the \$10,000 loan?

Q. Yes; you agreed on a certain loan; how much did you get?

(Testimony of B. W. Porter.)

A. About \$8,000 out of the \$10,000.

Q. So that there was \$2,000 you didn't get?

A. That's right.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Porter.

(Whereupon, there being no further questions, the witness was excused.) [1075]

### HILLIARD POWER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. Hilliard Power.

Q. Where do you live, Mr. Power?

A. In Spokane.

Q. How long have you lived here, sir?

A. Oh, about since 1919.

Q. What is your present occupation, Mr. Power?

A. Assistant secretary, Spokane Stock Exchange.

Q. Assistant secretary of the Spokane Stock Exchange, and how long have you been such assistant secretary? A. About four years.

Q. And how long have you been associated with the Spokane Stock Exchange, Mr. Power?

A. Well, that period of time.

(Testimony of Hilliard Power.)

Q. And what are your duties as assistant secretary, Mr. Power?

A. Keep charge of the filings and prepare certain statistical information and odds and ends of business that have to be attended to, filings, correspondence, all the secretarial work.

Q. Now, statistical information, you say, gathering statistical information; what are the sources of your statistical [1076] information, Mr. Power?

A. The sales of stock and the clearing of transactions and information regarding quotations.

Q. And what do you mean by referring to quotations?

A. The price at which stocks are bid and asked or sold.

Q. And you have access to all of that information? A. Yes.

Q. And it's directly under your supervision as assistant secretary? A. Yes.

Q. What nature of stocks are traded on the stock exchange at which you are secretary?

A. Mining stocks, chiefly.

Q. Mining stocks chiefly? A. Yes.

Q. And can you state whether or not the Lucky Friday Extension is traded on the market?

A. It's not traded on the regular board.

Q. It's not traded on the regular board?

A. No.

Q. And how is it traded, sir?

(Testimony of Hilliard Power.)

A. It's traded in what they call the over-the-counter market.

Q. And what do you mean, over-the-counter market?

A. It's dealt in between brokers without passing through the exchange clearing. [1077]

Q. I see. You have access to information in reference to those transactions?

A. Access to information generally, except sales; no record is kept of sales.

Q. But as to prices? A. Yes.

Q. And bid and asked prices? A. Yes.

Q. And is such data kept on file at the Spokane Stock Exchange? A. Yes.

Q. And records are kept there evidencing these things that you've told us about? A. Yes.

Q. And they are under your supervision and control? A. Yes.

(Whereupon, graph prepared by witness Power was marked Defendant's Exhibit V for identification.)

Q. Do you recall that you were requested, Mr. Power, if you would prepare a graph in respect to the prices of certain stocks traded on the stock exchange some time ago?

A. You mean by Mr.—the defendant?

Q. Yes, by the defendant. A. Yes.

Q. And do you recall the names of the stocks involved in that [1078] survey?

A. I think it was New Hilarity, Lucky Friday,

(Testimony of Hilliard Power.)  
and Hunter Creek, and Lucky Friday Extension;  
if I remember it there was four or five of them.

Q. The New Hilarity? A. Yes.

Q. And the Idaho Silver? A. Yes.

Q. And what information were you requested to show on the graphs, Mr. Power?

A. The market fluctuations over a period of several months.

Q. Over a period of several months?

A. Yes.

Q. And what months were those, do you recall, Mr. Power? A. I don't remember.

Q. Now, I'll ask you, or hand you, rather, the Defendant's for identification V, and ask you if you recognize that?

A. Yes, it's a graph I prepared several months ago.

Q. Now, what data did you use in the preparation of this graph, Mr. Power?

A. Made up an average by taking the stocks that were to be graphed, the bid quotations on the first of the month, the middle of the month, and the end of the month, and tallying them up and hitting an average and finding the month's average from that. [1079]

Q. I see, and what information did you use in the composition of the graph, the information that was at hand at the exchange? A. Yes.

Q. And was there sufficient information with which you were able to prepare this graph?

(Testimony of Hilliard Power.)

A. Yes.

Q. And the graph as it appears here is the graph which you prepared in response to that request?

A. Yes, I recognize it.

Q. And what months and years does that graph cover?

A. Well, it would be 1945, 1946, and 1947.

Q. I see. A. As I remember it.

(Whereupon, enlarged copy of Defendant's Identification V was marked Defendant's Exhibit W for identification.)

Q. Now, do you recognize Defendant's W for identification which I am holding here, Mr. Power?

A. Yes, it's a copy of the exhibit I just looked at.

Q. I see, and have you compared the exhibit marked identification W with that identification which you have just examined?

A. Not up to the present time.

Q. When did you compare it or examine it, Mr. Power? [1080]

A. I haven't examined one in comparison with the other up to the present.

Q. Oh, I see. Would it be possible for you in just a moment or two to compare these two, or would it require some time?

A. No, I can tell by the general—

Q. All right.

(Testimony of Hilliard Power.)

A. I would say that they're quite accurate copies.

Q. Would you say that is a correct and accurate transposition of the graph which appears which you have identified as Defendant's Exhibit V?

A. Yes.

Mr. Etter: At this time, your Honor, I would like after handing it to counsel to present these two exhibits, which are the original graph and an enlarged one of the same, in evidence.

Mr. Erickson: To which we object as incompetent and immaterial to any of the issues in this case. This purports to be the market value of stocks, which we all know are affected by the foreign situation and the international situation and the economic cycles of the country, and have nothing to do with the issues in this case, what the public is willing to pay for certain stock on a particular day or at a particular time.

Mr. Etter: The contention, your Honor, is made in the indictment that these individuals attempted to create [1081] or did create through the various acts alleged in the conspiracy a market demand for the particular stocks that the government has used from the particular companies, in the indictment. Our contention, of course, is to the contrary, and the evidence so far has disclosed that in part there was a general upturn in these stocks. We have taken these stocks as they appear upon the board to illustrate so far as the two involved here are

(Testimony of Hilliard Power.)

concerned, for the jury to compare them, under proper instructions, with regard to whether or not there is anything different or variable between those stocks and regular stocks that appear upon the board.

Mr. Erickson: I might state that the indictment does charge that these defendants by activity did create an appearance that the stocks would be of enhanced value, but that activity was alleged in the indictment as allegedly due to the activity that was already started and undertaken there, but this situation here combines many other factors which are wholly outside the scope of this case.

Mr. Emigh: It certainly negatives that allegation and the evidence touching on it from which an inference relating to that might be drawn.

The Court: Let me see the exhibits.

Mr. Etter: Your Honor, this one may be a little [1082] clumsy.

The Court: I don't think anyone will dispute that.

Mr. Etter: I might say that these read up and down, and they're transposed crosswise.

The Court: Well, as I understand it, one to a degree is a duplicate of the other?

Mr. Etter: Yes, your Honor.

The Court: Well, certainly both of them are not admissible, and the one which is the easiest to see is the one that should be admitted if either is admitted, so that the one confessedly clumsy will be

(Testimony of Hilliard Power.)

rejected. That's W. The objection is made only upon the grounds that it's not material?

Mr. Erickson: I would like to ask another question if the court rules on that, about the accuracy of this, on voir dire from the witness.

The Court: Well, of course if I rule and admit it, it's in.

Mr. Erickson: Well, I only had one question to ask; I never had an opportunity to ask it.

The Court: Well, you have the opportunity to ask if you wish; if you wish to examine voir dire you may, but if I rule first and it's admitted, your examination may be too late.

Mr. Erickson: I just have one brief question to ask.

The Court: Do you want to ask it now?

Mr. Erickson: Yes.

#### Voir Dire Examination

By Mr. Erickson:

Q. Mr. Power, was identification V prepared by yourself? A. Yes.

Q. And you had the knowledge to make this yourself from statistics you had available?

A. Yes.

Q. And that's accurate to the best of your knowledge?

A. To the best of my knowledge.

Mr. Erickson: I have no further questions on voir dire.

(Testimony of Hilliard Power.)

The Court: The objection is only made upon the ground of immateriality. This is defense. It's admitted for such aid if any as the jury may think it is to the jury. Objection overruled.

(Whereupon, Defendant's Exhibit V for identification was admitted in evidence.)

Mr. Etter: That's all, Mr. Power.

Mr. Erickson: There's no cross-examination.

(Whereupon, there being no further questions, the witness was excused.) [1084]

### JAMES ANTHONY ALLEN

the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Etter:

- Q. Will you state your name, please?
- A. James Anthony Allen.
- Q. And where do you reside, Mr. Allen?
- A. In Spokane, Washington.
- Q. And how long have you resided in Spokane, Washington? A. Steadily since 1936.
- Q. And you're married, Mr. Allen?
- A. Yes, I am.
- Q. What is your family composed of?
- A. I have two daughters, one 20 and the other 17.
- Q. Now, what occupation or what business are you now in, Mr. Allen?

(Testimony of James Anthony Allen.)

A. In the mining business.

Q. And state what positions you hold, if any, in any mining companies at present?

A. Well, I'm president at the present time, and have been since December 26, of the Lexington Silver Lead.

Q. December 26 of what year?

A. Of 1946. I'm president of the Pilot Silver Lead Mines, and have been president and treasurer of that since August of this year, August of 1948, rather, August 10, elected at a stockholders' meeting. [1085]

Q. All right, and are you engaged in any other mining business or operations at the present time?

A. Yes, several others.

Q. What are they?

A. Namely up in the Mullan district, which is the Hunter Silver Lead, the Lucky Friday Extension, the Hibernia, the Alma, and the Coeur d'Alene Consolidated.

Q. And at the present time you have interests, have you, then, Mr. Allen, in those various properties? A. Yes, I have.

Q. Now, when did you first enter into the mining business?

A. Actively in management was in 1937. However, I had worked in the mines in Butte as a boy when I was about 15, to 18.

Q. I see, but the management part of it you say about what year, again? A. 1937.

(Testimony of James Anthony Allen.)

Q. And with what company were you then associated, Mr. Allen?

A. The Callahan Consolidated.

Q. And where is that company located, Mr. Allen?

A. At Wallace, Idaho, in Shoshone County.

Q. I see. What was your position with the Callahan Consolidated?

A. I was vice president in charge of operations.

Q. And what operations did that cover, Mr. Allen?

A. Well, that covered the actual construction of the milling [1086] plant and the development of the mine, and after the mill was completed, then for the production of the ore from the mine through the mill, a regular mining operation.

Q. And you say you were superintendent of that particular operation?

A. I was vice president of the operation, but Joe Grismer was the active superintendent.

Q. And when did you first become acquainted with Mr. Grismer? A. I believe it was in 1938.

Q. You believe in 1938? A. 1938.

Q. What were the circumstances of your meeting him?

A. Well, the Callahan Consolidated were driving a long cross cut, or a long cross cut had been driven on what is known as the Red Monarch side of the Consolidated workings. It lacked about a thousand feet of being completed, on the thousand

(Testimony of James Anthony Allen.)

foot level, to raise up and make a connection with the shaft. Mr. Grismer was a well known contractor and director of several mines in the district, and particularly with shaft contracting and cross cut drifting, so he came to the office and put in a bid at so much per foot to finish up the cross cut.

Q. And what did your company do in relation to the bid?

A. We accepted his bid and he went to work for the company, first as a contractor, and then carried on later as superintendent. [1087]

Q. And did he complete his contract?

A. Yes, he did.

Q. And was he further employed by the Callahan Consolidated following the completion of the contract work? A. He is to this day.

Q. Where is the office of the Callahan Consolidated located with reference to the—not the town of Wallace, but in the town of Wallace?

A. Well, it's located—the office of the Callahan?

Q. Yes.

A. Well, it's located in the Gyde-Taylor Building.

Q. Were those the offices which you occupied when you were superintendent?

A. Well, when I would be in the office I would have an office, it would be Mr. Grismer's office personally, but I would be in the office when I would be there, and I spent perhaps two weeks out of each

(Testimony of James Anthony Allen.)  
month, or maybe more, in Wallace at different times.

Q. In the office? A. Yes.

Q. Now, at that time, referring to I think you said about 1936 or 1938, were you acquainted with Mr. F. C. Keahe? A. 1936—I mean 1938?

Q. Yes. [1088]

A. I had known him, but I had never had any business with him. I was at one time, in 1929, I was engaged in the meat business in Kellogg, Idaho, and I had had an assignment for an account for a mine out on Pine Creek, and there was some litigation in connection with it, and Mr. Keane and Mr. Hanson were on the other side in the litigation, and I had met him then.

Q. In other words, you weren't—

A. No acquaintance with him at all, other than just to know who he was, and how do you do.

Q. All right. Now, did you have any relations with Mr. Keane while you were an officer of the Callahan Consolidated? A. Yes.

Q. When was the first time that you had such relations, Mr. Allen?

A. I would say in the spring of 1943.

Q. The spring?

A. Yes, or about February or March of 1943.

Q. And will you state what the occasion was?

A. Perhaps maybe back in January it was. It was the early part of 1943. The Lexington operation in Montana, which at that time the directors were Mr. Donald Callahan of the Callahan Con-

(Testimony of James Anthony Allen.)

solidated, and Judge W. F. McNaughton of Coeur d'Alene and myself, and two others, the offices were all together in the Gyde-Taylor Building. The war came on, [1089] and the shortage of labor was rather acute at Neihart, and together with a serious raise in the price of materials and labor. The Lexington had an investment in Callahan.

Q. What did that consist of?

A. It was the purchase of a million shares of the Callahan Consolidated stock, which was invested for the purpose of constructing the mill and other mining development.

Q. At the Lexington property?

A. At the Callahan property. It seemed there was some litigation arose over the notes or over the payments in connection with the milling, and Mr. Keane was employed by the directors to handle the litigation. It seemed he settled the litigation with Sherm Smith.

Q. Who is Mr. Sherm Smith?

A. An attorney at law at Helena, Montana, who was representing the other litigants, and at that time a loan was advanced by Independence, of which Mr. Keane was president, and as attorney for the Consolidated, for the purpose of settling this litigation. I'm not too familiar with all the details of it.

Q. You say, though, that Mr. Keane represented your interests, that is, the Callahan interests at that time?

(Testimony of James Anthony Allen.)

A. Yes, the company's, the corporation's interest.

Q. Had he performed any other services up until that time for you or any company in which you were interested, Mr. Allen? [1090]

A. No.

Q. And where was his office located from where your office was located in the Gyde-Taylor Building?

A. Well, it would be right across the hall and down the hall maybe 20 feet on the corner, and the Callahan office is right in the center, Mr. Gyde's office is here, and Keane's here.

Q. On the same floor?

A. All on the same floor.

Q. Now, did you have any other discussions about mining with Mr. Keane about that time?

A. In the course of this settlement of this litigation at Helena the production of the Lexington prior to that was chiefly in silver and gold, and I think the '42 production was about a half million dollars, \$550,000. There was some dumps adjacent to and part of the Lexington dumps, that contained a fair lead and zinc value, and that would be about the only type of mine allowed to run during the war on account of the priorities. Keane became interested in it to the extent of wanting to run the dumps.

Q. Did he discuss it with you? A. Yes.

Q. And where did this discussion first take place?

(Testimony of James Anthony Allen.)

A. I would say right in the Callahan office or in his office, perhaps. [1091]

Q. Do you remember who went to whose office?

A. I think Keane came to our office.

Q. And did you have a discussion at that time?

A. Yes, we did.

Q. Now, was there any further discussion, Mr. Allen?

A. Yes, that the Independence Lead Mines had considerable money and large blocks of Clayton stock, and I think it had large blocks of Silver Syndicate, but at any rate, he wanted to invest the Independence money into another property.

Q. What did he say?

A. That he would like to invest into the Lexington, or to a company formed to take it over, with Independence funds, for the purpose of trying to bring in another mine like they had done at the Clayton, when the Independence financed the Clayton.

Q. What did you say, Mr. Allen?

A. Well, we thought it was a very good idea. At that time I owned the controlling interest in the Delaware Mines——

Q. Now, just a minute. Where was the Delaware Mines Company located?

A. Right in Wallace, Idaho. The Callahan Consolidated was purchasing it.

Q. And what was your connection there with the Delaware?

(Testimony of James Anthony Allen.)

A. Well, I owned about 60 per cent of the stock in the Delaware. [1092]

Q. At that time? A. Yes.

The Court: How much?

A. About 60 per cent.

Q. And did you say there was an agreement—what did you say about the Delaware and Callahan?

A. The Callahan was purchasing the Delaware Mines for \$75,000, the Delaware Mines property.

Q. At that time? A. At that time.

Q. I see. What was your further discussion then, if any, had with Mr. Keane?

A. Well, the result was that the Independence and the Delaware Mines would enter into this financing arrangement of the Montana Leasing Company which Keane had proposed, and did file the Articles of Incorporation in Helena, Montana, and that made—

Q. Now, what arrangements were made at that time, if any?

A. The arrangements were that both companies would invest the necessary capital into this corporation, for which they would receive a production note payable out of the production of the mine, and also a bonus of stock of the corporation; I think the Independence was to receive 14 or 15 per cent, and the Delaware a like per cent.

The Court: How much? [1093]

A. A like per cent.

The Court: 14 per cent?

(Testimony of James Anthony Allen.)

A. Yes, or in proportion to what money would be advanced, in that respect.

Q. That was discussed during these negotiations?

A. Thoroughly.

Q. Tell us what happened then, after the discussion?

A. Well, it's quite a while ago to remember it exact, but nevertheless it took form.

Q. Briefly.

A. The operation first started, the Montana Leasing took over the operations of the then Lexington by the lease of their milling plant and so forth, for running these dumps, on June 26, 1943.

Q. Now, after that, Mr. Allen, after the operation started, then what did you do?

A. For the first six months or perhaps the first year, I'll say, to maybe the middle of '44, I didn't pay too much attention to the Montana operation because of my confining to the Callahan Consolidated, but William Mullen Sr., who was then the director and secretary of the Independence, and Mr. Keane handled the Montana operations most of the time. It developed that the dumps were not profitable, that the cost and the recovery couldn't be obtained to make it profitable. There was additional ground adjacent [1094] to the Lexington, namely the Benton and the Ripple claims—

Q. Were you familiar with those claims?

A. Yes, I was. Negotiations started then in early 1944 which resulted in the acquiring of those

(Testimony of James Anthony Allen.) claims on a lease and bond contract to the Montana Leasing Company or its successor, which was then to be the Lexington Silver Lead in 1944. Negotiations went on with the directors of the Lexington in 1944.

Q. Who carried on the negotiations?

A. Keane and myself.

Q. Who was that?

A. Mr. Keane and myself, Mr. Keane mostly, that the Lexington property would be put into the Lexington Silver Lead, that is, its plant and ground, and have its distributive share of stock in the new company. The Delaware Mines would put in its investment and receive a production note for the money it advanced, plus 5 per cent interest and a block of stock in the new company; the Independence would do likewise, and I believe the Articles were drawn sometime in 1944, but they hadn't been filed until later on.

Q. Now, the first year of your operation I think you said was from 1943 until 1944? A. Yes.

Q. And that you confined most of your efforts to the Callahan?

A. Mostly to the Callahan during that period.

Q. Were you engaged in any other interests at that time?

A. Yes, and in the Mullan district in connection with the Gold Hunter, which was just beginning to germinate at that time.

(Testimony of James Anthony Allen.)

Q. Are you acquainted with the Gold Hunter property? A. Yes.

Q. And where is it situated in relation to these different companies that have been mentioned here?

A. Well, it adjoins right within 500 feet of the Lucky Friday mine, the Big Friday, and it also adjoins the Extension, the Big Hunter workings on the 1200 foot level are only 300 feet from the end line of the Hunter Silver Lead, and the Hunter Silver Lead vein and the Gold Hunter vein are one and the same vein that goes through it. It adjoins the Pilot on the south; the Pilot adjoins it to the north.

Q. And what other companies are adjacent?

A. The Alma then adjoins the Pilot, and the Hunter Silver Lead to the north, the Hibernia joins the Hunter Silver Lead to the east, the Idaho Silver adjoins the Hibernia to the south, and the Homestake, owned by the Day Mines, adjoins the Hibernia on the south, the Hunter Creek adjoins the Hunter Silver Lead directly on the south. The Hunter Creek then is connected up with the Lucky Friday, the Big Friday, it joins right to the north and to the east. They're all in one mountain. [1096]

Q. These companies that you've described, are they all together as you've described them?

A. Yes, they are all contiguous and adjoining.

Q. And what work were you carrying on at that time with respect to those properties?

A. The idea was, and it developed pretty much

(Testimony of James Anthony Allen.)

in the dry belt, to put them all into a central development, because of the vein systems that traverse through there, and the extra-lateral rights that might arise through the various companies, it may be the apex of the vein on this property, but for another working it would be hit on another property; that a central working agreement be worked out for all, and that a development be done through the Gold Hunter mine, which had two or three miles of underground workings, and had a 600 ton mill, and was located right on the road and the railroad track, and had a production record of approximately twenty million dollars.

Q. What company was that?

A. The Gold Hunter.

Q. And did you carry on any active negotiations?

A. I did. Through that I met in Wallace, John Sekulic, who was then and now is the president of the Big Friday. John had told me in 1944 that the Gold Hunter could have been bought during the depression for \$100,000.

Q. Where did you have this conversation? [1097]

A. At John's house; it used to be a favorite place to go up to eat, from Wallace to John's house. He suggested the Gold Hunter, the Big Friday taking over the Gold Hunter on many occasions, or attempting to work out some consolidation with it, and also the ground adjoining right to the west, which is right in between the Friday and the Gold Hunter. John claimed he owned that ground at

(Testimony of James Anthony Allen.)  
all times, and that it should be developed, even into 1944. I started carrying on negotiations with the owners of the Gold Hunter in February, January or February of 1945.

Q. Of 1945?

A. Yes, maybe January or February, and I think there was a phone call or two from Chicago, or from Mullan or Wallace, rather, to Chicago, to an attorney, Mr. George Bowden, in late 1944.

Q. You say you made that phone call?

A. Made the phone call, because he was acquainted with Mr. Murphy.

Q. And who was Mr. Murphy?

A. Murphy was an attorney for the Gold Hunter people in Chicago.

Q. Now, besides Mr. Murphy and the Gold Hunter people, had you talked about development of this property with any other mining men in that locality? A. Yes, all of them. [1098]

Q. Would you name a few?

A. Well, Mr. Dunlop, of the Hunter Creek; the Days, who own the Homestake—

Q. The Days?

A. The Day Mines, yes; the Rothrock—

Q. Who did they refer to as the Days at that time? A. At that time?

Q. Yes.

A. Well, Mr. Rothrock represented the Days. The Homestake ground was lying right north of the Hunter Creek.

(Testimony of James Anthony Allen.)

Q. And who owned that property?

A. The Day Mines owned it.

Q. And what other mining people, if you recall them now, did you talk with?

A. The Idaho Silver.

Q. And who were they?

A. George Mortimer, I believe, or Quinlan.

Q. Any others that you can remember?

A. The Vindicator, which was John Sekulic carried on most of the business of the Vindicator, which was Ingles of Mullan.

Q. Anybody else?

A. Grismer, who owned the Pilot, Joe Grismer.

Q. When did you first talk with Mr. Grismer about the Pilot property, Mr. Allen?

A. Well, I think Grismer talked to me about it.

Q. Do you recall when?

A. I believe it was sometime in '45.

Q. Sometime in '45?

A. He had talked to me over several properties in early '43 or '42. I invested \$2,000 with him in what he called the Radon property in Superior, Montana.

Q. With whom? A. With Grismer.

Q. Where was this property?

A. At Superior, Montana.

Q. And what was the name of it?

A. I believe he called it the Radon.

Q. And who owned it, you say?

A. Grismer.

(Testimony of James Anthony Allen.)

Q. That was the first time you say that you were interested in a mine with Mr. Grismer?

A. I wouldn't be positive of that; it could be before, but also the Silverton, he tried to get, asked me to go into the Silverton with him before.

Q. Where is that?

A. That's located down at Osborne.

Q. Where is that?

A. About nine miles southwest of Wallace.

Q. State what occurred on the Radon operation.

A. I invested about \$2,000, and the Callahan Company I think [1100] invested about \$4,000.

Q. In that operation?

A. Yes, and also the Western Silver, which he has and had then, and hadn't been incorporated, but which has since been, and in which he's active now, but I didn't go into that.

Q. All right.

A. But the Pilot, we were interested on the basis of it fitting into the general plan there, because all the veins of the Pilot dipped to the south, and there would be veins in the Pilot that would be hit on the Alma and the Hunter Silver Lead; there would be veins at the Hunter Silver Lead that at the 1200 foot level would be in the Hunter Creek ground; the same in the Vindicator; the veins in the Vindicator that dipped to the north would be hit in the Homestake ground; the veins in the Alma would be hitting into the Hibernia ground at that depth.

(Testimony of James Anthony Allen.)

Q. You're acquainted with that vein and structural system? A. Yes, I am.

Q. How have you become acquainted with it?

A. Well, from the study of the engineering reports that we've had on the properties.

Q. And have you made a complete study on all that property?

A. I have, thoroughly and intensively.

Q. Now, you say that you had some conversations with Mr. [1101] Grimer about the Pilot. Did you have any further conversations with him in 1945?

A. I believe that he had it optioned to someone in Spokane in 1945, and after the Extension stock had been sold the market was in such—the stock was sold overnight, the Extension and the Idaho Silver and the Hunter Creek were offered to the public, their original issue, about the same time; the stock was sold overnight by the underwriters, and it attracted the attention of everyone, the market on the stocks, of course. That's when I first became interested in the Extension, is after the stock had been sold and the market had gone in such a way. Grismer then I think cancelled his option or whatever he had in Spokane, and was going to form the Pilot Company himself.

Q. Now, you heard some testimony here about a meeting, Mr. Allen, in Pat's Cafe?

A. I did.

Q. Were you there? A. I was.

(Testimony of James Anthony Allen.)

Q. And will you state who was there at that time?

A. I believe there was John Sekulic, Wilbur Emacio, that just testified his morning, Keane, I'm not sure whether Ted Halin was there or not, I believe he was, there was Mr. A. F. McFee, there was Joe Grismer—

Q. And do you recall approximately the date of that discussion? [1102]

A. I couldn't pin it to the exact date, but it would be sometime in the month of May.

Q. Of what year? A. Of 1945.

Q. And will you state if you recollect what was said by the people there?

A. Sekulic had talked before on several occasions of the ground adjoining the Big Friday as being his.

Q. To you?

A. To me; and we paid no particular attention to it at that time; and that an Extension should be started like the Goleonda, and work through the Friday. He again brought it up that night, and wanted those there to put in a thousand apiece, and his idea was to run a cross cut north from the then thousand foot level of the Friday to cut what is called the north vein that comes in on an angle. I was asked to go in for \$500.00, and I wouldn't do it. I believe McFee and two or three more did put up the \$500.00, but I was not interested enough in it to go into that, for that type of development, because it would avail nothing.

(Testimony of James Anthony Allen.)

Q. That was your opinion?

A. That's right.

Q. Now, was there a subsequent discussion at the Samuels Hotel? [1103]

A. I believe the following day in the Metals Bar, around 4:30 after coming out of the office, they'd been congregating there, it was brought up again by Sekulic. Those present there were Sekulic, Halin, myself, Horning, Keane, Emacio, McFee, and three or four more.

Q. I see.

A. During the course of that day, sometime, they had been in there before I came in there, and I believe I came into the bar with Joe Grismer, because we both left the office together.

Q. That's the Callahan?

A. That's the Callahan office, and they had at that time decided on the contract, the working agreement between the Friday and the Extension; it was being called the Extension then by Sekulic and Horning and Keane.

Q. All right. Did you say anything at that meeting, Mr. Allen?

A. Not that I could be specific on, other than just the general conversation, and that Sekulic said to Joe, "You go up there and locate these claims, get hold of Lakes and go up there in the morning" and it was discussed back and forth, and I didn't pay any particular attention to it from then, other than until after the contract was signed.

(Testimony of James Anthony Allen.)

Q. What contract was that?

A. That's the first contract, between the Extension and the [1104] Friday.

Q. And did you have some conversation with somebody after that contract was drawn?

A. Yes.

Q. Who was that?

A. I asked Horning for a copy of it, sometime in July, and about at the same time I asked Joe to see it, and Joe said "I will" and he started cursing it, he said it's so one-sided. Well, we both looked at it, and they had a provision in it, what I was interested in was the manner in which he was preparing working agreements back and forth between the two companies. They had similar contracts in the dry belt, and it was the pattern that we were intending to follow for the central development with the five or six companies into it. I noticed in the contract any equipment that would be purchased by the Extension, and which they had to purchase everything, including another compressor for the Friday in order that there would be adequate air, tramping, motors, drill, steel, pipe and rail, that all of that equipment would become the property of the Lucky Friday.

Q. You mean the Big Friday?

A. I mean the Big Friday.

Q. Did you discuss that with Joe Grismer?

A. That's right, sometime in July. [1105]

Q. What was said about that provision?

(Testimony of James Anthony Allen.)

A. That it should be deleted.

Q. Who suggested that? A. I did.

Q. Was there anything further done in respect to that matter?

A. There was later on, when I was employed by the Hunter Creek to carry on negotiations with the Friday so that they would go out east on this Friday shaft into the Hunter Creek. There was a supplemental contract made to the original, which did delete that equipment provision.

Q. I see.

A. Another criticism we had of the Extension contract, that I had, was that it was on a fifty-fifty basis, with the Big Friday; the Extension had to put up all the money, and they were to get half of the profits and the Big Friday half. The Hunter Creek contract is seventyfive-twentyfive.

Q. What was your opinion of that part of the agreement?

A. Well, that it's not equitable for the Extension Company.

Q. And state what your reasons were for that opinion.

A. Well, other than the Extension bearing all the cost and assuming the risk of the investment, and it could be that the ore would be just marginal, there would be very little profit for it.

Q. Were there any other matters discussed with Mr. Grismer at [1106] that time? A. Yes.

Q. What were they?

(Testimony of James Anthony Allen.)

A. It took on, later on, I asked him what his stock position was, how much stock he was getting on Friday, and he said that was being worked out with Keane and Sekulic, and that he was to get about 600,000 shares, or perhaps more. We then, with the Hunter Silver Lead and the Alma and the other companies, we made an agreement that I would get 300,000 shares of the Extension, and he in turn would get stock in the other companies that I had in Mullan and that would be formed.

Q. You had an agreement with him on a stock exchange at that time?

A. That's right; that would go into perhaps September or October.

Q. That you first talked with him about that?

A. Well, it might have started in August.

Q. I see.

A. But it was just in connection with the stock that he was to get.

Q. Were you acting in any negotiations at that time with those companies?

A. For the Hunter Creek I was.

Q. And who were the people, Mr. Allen, who owned the Hunter [1107] Creek, or the majority of the Hunter Creek?

A. Well, Elmer Johnston of Spokane was heavily interested in it, and C. O. Dunlop of the Silver Dollar Mining Company.

Q. And were you paid for that participation?

A. Yes, I was.

Q. In what amount?

(Testimony of James Anthony Allen.)

A. I received 100,000 shares of Hunter Creek stock.

Q. I see, and what agreement was negotiated by you at that time for Hunter Creek Silver?

A. You say what was the agreement?

Q. Yes.

A. Well, it resulted in a working agreement, it was a working agreement with the Big Friday for the access through their shaft and to drift out east and northward into Hunter Creek ground from the 1400 foot level, which they agreed to put up money to help sink the shaft to the 1400 foot level.

Q. That was the Hunter Creek?

A. That was the Hunter Creek.

Q. During the course of those negotiations did you talk with Elmer Johnston, a lawyer in Spokane? A. Many a time.

Q. You heard his testimony that you talked with him on several occasions about Lucky Friday Extension? A. Many times, yes. [1108]

Q. What have you to say about that?

A. On Lucky Friday Extension, talked to him many times?

Q. Yes.

A. No. I've discussed Lucky Friday Extension with him perhaps later, in July, or August, or it couldn't have been before the forming of the company, because I believe that the Lucky Friday Extension, from the date of the record, we just received it today, those claims were located on the

(Testimony of James Anthony Allen.)

25th of May, and it seems to me that would take place from the day previously, to the conversation in the Metals Club with Sekulic, and this contract was entered into I believe in June.

Q. So what's your best recollection?

A. I would say that my first discussions with Johnston, if there were any in the month of June, would only be in generalities of the entire mining development of Mullan.

Q. Now, did you talk with Mr. Keane in respect to the Lucky Friday Extension?

The Court: I think this is a good time for a recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Etter: Will you repeat the last question, Mr. Reporter, please? [1109]

(Whereupon, the reporter read the last previous question.)

A. I presume I had several conversations with Mr. Keane.

Q. Do you recall, Mr. Allen, what the nature of the conversations were?

A. Well, in the beginning I don't imagine they would be any more than just what publicity it might have been given in the preliminary stages of it. Keane was forming lots of corporations in his office;

(Testimony of James Anthony Allen.)

he was doing a lot of legal work. I didn't pay any particular attention.

Q. Did you have some discussions with Mr. Keane concerning your venture in Montana at Neihart during that period of time?

A. Oh, yes, on many occasions.

Q. And had you gone over there numerous times?

A. Quite often; quite often.

Q. After the first year of that operation, in which you said you remained more with the Callahan Consolidated, what was your relation with the Montana Leasing Company or the Lexington Silver Lead?

A. Well, with the Montana Leasing Company up to the time that the Lexington Silver Lead articles were drawn for the purpose of taking over all the contracts and all the properties and issuing the stock for the properties and the investment, I don't believe that I even had the right [1110] to sign checks in the Montana Leasing during 1944, '43 or part of '44. I'd be hazy on when it would be; it was after; I think it was sometime 'way later on that that.

Q. Speak up, now, so the jury can hear what you're saying. A. Yes.

Q. Now, had you done anything further about your development program in that area at that time, referring now to May or June of 1945?

A. Yes, we were carrying on active negotiations with the Chicago people in 1945.

(Testimony of James Anthony Allen.)

Q. All right, and what negotiations did you carry on at that time, if you can tell us?

A. Well, Mr. Bowden, the attorney in Chicago, had made a pretty complete examination of the Gold Hunter books over a thirty year period, and had the accounts showing the production and the amount of royalty that was being paid to the owners of the Gold Hunter.

Q. Had that information been communicated to you? A. Yes, it had.

Q. And what did you do?

A. Well, John Sekulic and I discussed it, together with Cecil Dunlop of the Silver Dollar, and together with J. T. Halin, Mr. A. F. McFee, and Mr. Gibson.

Q. Who is Mr. Gibson?

A. The broker in Spokane, Mr. E. J. Gibson.

Q. And what did you do at that time, after this discussion?

A. Well, we addressed them to have them put a price on the Gold Hunter, and made an offer for \$250,000 for the outright purchase of the plant and the mine.

Q. Who made that offer to them?

A. I made the offer to them.

Q. And where was the offer made?

A. In Chicago.

Q. All right, when did you go back to Chicago?

A. I'll retract that. I believe the offer was made, the first offer, through Mr. Bowden in Chicago.

(Testimony of James Anthony Allen.)

Seems like I went back to Chicago sometime during the summer of 1945 to attempt to negotiate to close it.

Q. That was during the summer of 1945?

A. That's right.

Q. Was that at the time when the Lucky Friday Extension was being organized?

A. That's right.

Q. And you went back to Chicago?

A. That's right.

Q. Now, do you recall how long you were back in Chicago?

A. I think I was three or four days there at that trip.

Q. And what did you do while you were in Chicago?

A. I had three days with Mr. Murphy in his law offices in the LaSalle Building. [1112]

Q. And who is Mr. Murphy?

A. He's the attorney for the owners of the Gold Hunter, and I believe secretary and treasurer of the Gold Hunter Corporation.

Q. And who were at that time the owners of the Gold Hunter?

A. The owners were the Keely estate of Chicago, that own the Keely breweries, and the Ryans of Minneapolis, that have the Three-Star Hennessy.

Q. They were the owners of the Gold Hunter?

A. They were the owners of the Gold Hunter; there's about nine that own it.

(Testimony of James Anthony Allen.)

Q. And you talked to Mr. Murphy back there?

A. That's right.

Q. What was the nature of your discussion?

A. I made him an offer of \$250,000 for the Gold Hunter Mine.

Q. And what authorization did you have for making that offer?

A. Well, I had the authorization, Mr. Halin was going to go in on it, Mr. McFee, and Mr. Gibson.

Q. And were there any respective amounts that had been committed by those gentlemen in the purchase of the Gold Hunter?

A. Mr. McFee had committed to \$100,000.

Q. And what were the others?

A. I think Mr. Halin's was \$25,000, and Mr. Gibson was going to have the rest; he had some other associates that were [1113] going to put up the balance, and in addition, the Lucky Friday, there were several discussions with Judge Featherstone, John Sekulic, and Horning.

Q. Who had those discussions? A. I did.

Q. Was that prior to or after your trip to Chicago?

A. I believe that was prior to, but we had the information from Mr. Murphy as to what the physical value of the Gold Hunter was.

Q. And will you state what was the nature of those discussions with those people whom you've named?

A. They were interested in acquiring it, but their

(Testimony of James Anthony Allen.)

only manner of putting up any cash would be of selling some of the treasury stock of the Big Friday, and they wanted 60 per cent of the Gold Hunter if they went into it, which they were agreeable to put up \$150,000. We were not interested.

Q. Who do you mean by "we were not interested"?

A. Well, I, for one, or McFee, or the rest, were not interested in giving them 60 per cent of the corporation.

Q. So what was the result then of your talks with Mr. Murphy in Chicago?

A. Their price then, he wanted \$450,000. At that time, about that time, the government put a premium on lead and zinc production, a bonus plan. The lease was at the Gold [1114] Hunter, there were about fifty men working under a lease. The contract with the lessors was that the Gold Hunter Mining Company get 15 per cent of the total net smelter returns, and 50 per cent of the A bonus which the government was then paying, and I believe that amounted to about three cents a pound on lead.

Q. And that was the situation at the time that Mr. Murphy set this price for purchase?

A. That's right.

Q. And what did you say then to Mr. Murphy?

A. Well, of course \$450,000 was absurd.

Q. Did you tell him that?

A. Yes, and I continued the offer of \$250,000.

(Testimony of James Anthony Allen.)

Q. You continued that offer?

A. That's right, I did.

Q. And did you have any further conversations after that with Mr. Murphy in Chicago?

A. In March of 1946 I again went to Chicago.

Q. And what was the purpose this time of your trip?

A. That was to renew again the offer, and we would come up, I think to \$350,000, but wanted time on the \$100,000, because we figured it would take—

Q. Who do you mean by "we" again?

A. Well, Mr. Lakes made an examination of the Gold Hunter. Mr. McFee was perhaps the principal one in this, with the [1115] associates. We had had several discussions on it, and after talking with Mr. Lakes and as to the physical condition of the underground workings of the Gold Hunter, which could be, on the 1200 foot level, go right out into the Lucky Friday and the Extension and the Hunter Silver Lead and right out into the Pilot to the north, it would require about one hundred some thousand dollars for the repair of the shaft.

Q. Which shaft?

A. The Gold Hunter shaft and the skip pockets in the shaft, so we felt that the price of \$200,000 or \$300,000, depending on the additional money that would have to be put in, was more than the property would be worth.

(Testimony of James Anthony Allen.)

Q. And you say that you came to that conclusion after Mr. Lakes' examination?

A. To the conclusion that you couldn't pay more than a quarter of a million dollars for the property.

Q. I see, and how long—

A. I went back then in March to renew that offer with Murphy, to see if something could be worked out.

Q. Have you been back to Chicago to talk to Mr. Murphy since March of 1946?

A. Yes, I went back in December of 1947.

Q. December of 1947?

A. Yes, I was there on December 10 with my wife and daughter. [1116]

Q. All right, and what was the purpose of that trip?

A. The express purpose of that trip was to further not renew this offer of that amount, because the associates we had at that time were pretty well dropped out, but it was to attempt to renegotiate; but the main purpose of that trip, now, sometime in August of 1945, and I didn't know this until 1947, Murphy of the Gold Hunter served a notice on the Extension and the Lucky Friday Mining Company sometime in August of 1946 that if they continued further with their drift into Extension ground, they'd be encroaching on Gold Hunter ground, and he described the ground to them and told them he would get out an injunction and stop any further work, because the cross cut in his opinion was then

(Testimony of James Anthony Allen.)  
in Gold Hunter ground. Grismer and myself in  
1947, after we had come into the companies—

Q. Just one moment; did you say that he gave  
you this information in 1947?

A. In 1947, in the early part of 1947.

Q. And had you known about it before that?

A. I didn't; I did not. We then took it up  
with Sekulic, and he laughed at it; he said, "Oh,  
if there is any claim"—they claimed one of the  
claims of the Extension, that that claim was located  
on the Gold Hunter homestead. There was discus-  
sions with Sekulic and with Horning; Horning  
laughed at it, and said he'd never let them down  
in the mine anyway to determine it, so we employed  
Axel Johnson—

Q. Who do you mean, "we"?

A. Mr. Grismer and myself, or the Extension  
Company, and had Mr. Johnson make a survey of  
the Extension ground.

Q. This was when?

A. 1947, and I have his map, and tied it in with  
the Friday shaft survey, the Friday shaft and the  
drift as far as it had been driven into Extension  
ground. His findings were that the cross cut was  
in that ground about 20 or so feet, that the Lucky  
Friday claim end line had to be shoved back 300  
feet from what they thought they owned, which left  
it that the cross cut is just 300 feet from the shaft,  
and in Gold Hunter ground.

Q. What did you do then, after that survey?

(Testimony of James Anthony Allen.)

A. We made several demands on Horning and Sekulic to do something about it.

Q. Who made the demands?

A. Grismer and myself.

Q. What were the nature of these demands?

A. Was to make some arrangement with the Gold Hunter, or correct the title to those claims for the Extension Company. As I say, they'd laugh; not laugh, but pay no attention at all. In fact, they were sore at us because we had thrown Keane out.

Q. I see.

A. I went back in December and took it up with Mr. Murphy, and asked Murphy—I had been elected president of the Extension Mining Company on August 8 of 1947, and asked Murphy to show me the notices that he had sent, and when it was sent, which he did. He showed me the maps as to what they considered their Andretti-Salvatori claim.

Q. Who was showing you this?

A. Murphy, in Chicago, in his office. I asked him, while we were not conceding, that is, the Extension Company would not be conceding that was their ground, what arrangements could be worked out for the continuation of the development of it, if these companies would be going into the central development. He said he would have nothing to do with the Extension Company, and it was not because he had any personal animosity for any of the directors or the personnel in it, but in his opinion the contract between the Extension and the

(Testimony of James Anthony Allen.)

Friday, the Extension did not have the right of a permanent easement to the use of the Friday shaft. He said he would work out anything what he thought was reasonable with the Friday people, and they in turn could then work it out with the Extension. I asked on what terms—there was two claims, one out here, and here is the Friday shaft; one claim comes here, known as the Molly No. 3; below that is what is called the Dinty claim; [1119] the Lucky Friday vein strikes into that, and the known vein strikes into the Molly. He said he wanted 50 per cent of the net returns of any ore found in the Dinty claim, without any cost to them, and 10 per cent of the ore found in the Molly No. 3 claim.

Q. Had these claims been located by the Lucky Friday Extension?

A. These are the two claims that John Sekulic said he owned and had Grismer locate.

Q. After this conversation did you remain in Chicago?

A. I left and came home about the 13th of December, and I immediately communicated with John Sekulic on the telephone, Joe Grismer made two or three trips, I believe, to his house, and I told John that conversation with Murphy, and that they would have to initiate it for the reason that he wanted to have his contract with the ones that owned the shaft, and then he would only give a five year contract for any one period.

Q. Did you say anything further to Mr. Sekulic?

(Testimony of James Anthony Allen.)

A. I don't recall; there perhaps was a little more conversation than just that in connection with this, but that he had better do something about it.

Q. Did you make a demand?

A. Repeated demands on him; that was in the nature of a demand. We insisted on it. [1120]

Q. Did you give him the reasons?

A. Exactly.

Q. What did you say to him?

A. Told him he didn't own the ground, in Mr. Murphy's opinion.

Q. What else?

A. And that the injunction was there, and for them to do something about it, or at least re-form the contract.

Q. What contract?

A. The original contract of the Extension, to where it could cope with this interest of the Gold Hunter, if that could be worked out.

Q. Was anything further done then by Mr. Sekulic or Mr. Horning or any of the Big Friday people?

A. Not a thing; I think they started a stockholders' committee in Mullan and tried to throw us out.

Q. What did you do then, your company?

A. We brought a suit against the Friday to recover \$100,000, or ninety-two thousand and some dollars that had been spent in the Friday by the Extension, and asked for a reformation of this contract.

(Testimony of James Anthony Allen.)

Q. All right. Now, after the first year of the arrangement for the financing of the Lexington Silver Lead and Montana Leasing, did you go over to that property at Neihart?

A. After the first year, you say? [1121]

Q. Yes.

A. I made one or two trips in the first year, maybe three or four, but after that, why, I'd be there a good portion of the time.

Q. And were you quite active over there in that property? A. Yes, I was.

Q. And what was your position?

A. Well, I was in charge of the operations.

Q. You were in charge of the operations?

A. Yes.

Q. And what did the operations consist of?

A. Well, it consisted of driving the drift on the vein in the Flora ground, and starting several stopes, for which there had been some production, we had intermittent production, until we got back into where the ore chute was longer.

Q. How many men did you have working over there at that time?

A. I would say 20 to 25.

Q. That would be in what year?

A. 1945.

Q. 1945; and how long did that work continue at various stages?

A. Well, it continued up until the time of the indictment, as far as I was concerned, but it continued on through 1945 and 1946. [1122]

(Testimony of James Anthony Allen.)

Q. And you were up there, as you say, in the same capacity during that time? A. Yes.

Q. Now where were the books of the Lexington Silver Lead kept, Mr. Allen?

A. All the books of the Lexington Silver Lead, and the financial statements, bank statements, checks, and any ledgers incidental to those were in Mr. Keane's office, the same as with the Delaware Mines.

Q. And did you have access to the records, that is, the bank records and the statements and checks of the Lexington Silver Lead Mines throughout the years 1943, 1944, 1945 and 1946?

A. I did not.

Q. Did you have access—

A. I perhaps might have had access to them, but there was no occasion during those periods, at the time, to make too much of a demand for them.

Q. Did you have any conversations during those years with Mrs. Vermillion, in Mr. Keane's office, who testified here? A. No.

Q. No conversation?

A. You mean with respect to what?

Q. With respect to the Lexington Silver Mines.

A. Oh, yes, lots of conversations.

Q. What was the nature of those conversations?

A. Well, a good many times Mrs. Vermillion would deposit my personal checks to the Lexington Silver account.

Q. And the account was maintained where?

(Testimony of James Anthony Allen.)

A. At the Idaho First National Bank.

Q. Did you send numerous checks of your own during this period of time—

A. I certainly did.

Q. —to Mrs. Vermillion? A. Yes.

Q. And did you give her instructions with respect to those checks?

A. To be deposited with the Lexington Silver Lead account.

Q. And how long did that continue, starting with 1944?

A. It continued up until I believe November of 1946.

Q. Did you have any conversation with Mr. Keane in respect to the organizing of the Lucky Friday Extension? A. No.

Q. Did you have any conversation with him with respect to the articles of incorporation?

A. Never. I don't know that I've seen the articles yet.

Q. Of the Lucky Friday Extension?

A. That's right.

Q. Did you have any conversation with Mr. Keane with respect [1124] to the organization of the Pilot Silver Lead Mines? A. I did not.

Q. Did you participate or aid in the drawing of the articles of incorporation, Mr. Allen?

A. Of the Pilot Silver Lead?

Q. Yes. A. Never; never did.

Q. Have you ever had access to the books and

(Testimony of James Anthony Allen.)

records, referring specifically to bank checks and bank statements, of the Pilot Silver Lead Mines Company?

A. Never have.

Q. Have you had any access to the checks or bank statements or otherwise of the Lucky Friday Extension Company?

A. Never have.

Q. Did you have access to the records, referring specifically to the bank statements and checks, of the Delaware Mines Company?

A. Did I have access to those?

Q. Yes.

A. They were all kept in Keane's office, where all the banking was done, but I might have had the access to them if I so desired. I've never made the demand for them.

Q. I see.

A. But I've never looked at them, either.

Q. Did you have the access or have you ever had access to [1125] the account of the Montana Leasing Company?

A. I might have had, had I made inquiry for it.

Q. Did you ever make inquiry for it?

A. No, I didn't. I did around in June of 1947, I made inquiry at the bank.

Q. Was that the first time, Mr. Allen, that you had inquired about that account?

A. At the bank?

Q. Yes. A. Yes, it was.

Q. That you had requested access?

A. Yes.

(Testimony of James Anthony Allen.)

Q. What happened at that time?

A. I was refused access to it by Mr. O. L. Jones, the manager of the bank.

Q. And what reason did Mr. Jones give?

A. On the grounds there was not a resolution on file in the bank, while he knew that I had written checks on it, there was not a resolution showing my authority to, and he was a little reluctant, in fact, refused, because of what legal complications he might get in if he did let me examine it.

Q. All right; now, what was the first time that you examined or saw the financial statements and checks concerning the Lucky Friday Extension?

A. It was on January 15, in the district attorney's office, Mr. Erickson.

Q. Of what year? A. Of 1949.

Q. And when was the first time that you had access or did see the checks, financial statements and otherwise of the Pilot Silver Lead Mines?

A. I don't know that I've seen those yet. If it was, it would be in the district attorney's office. I beg your pardon, I did see one or two of those in May of 1947, I made a trip to Seattle to confer with Mr. Denney and Mr. Stocking, after two or three telephone calls by myself and Grismer asking why we couldn't have access to those checks for the purpose of making an audit, and I made a trip to Seattle, and I believe I saw one or two checks and asked a few questions, and later on Mr. Randall went into Keane's office and audited the financial

(Testimony of James Anthony Allen.)

records he had, and we did get a copy of the audit.

Q. Did you get permission then to have a certified public accountant make an audit of the books of those two companies, that is, referring to Lucky Friday Extension and Pilot Silver Lead?

A. Yes, we did.

Q. And what happened pursuant to that permission?

A. He went to Keane's office where the records were kept [1127] under subpoena, and made the audit.

Q. And did you receive copies of the audit?

A. We received copies of the audit.

Q. And are those the copies of the audits that are here in evidence as exhibits for the defendant?

A. They are.

Q. Now, when was the first time that you had access or examination of any of the Montana Leasing Company financial reports, I should say, or checks?

A. It was about January 15 in Mr. Erickson's office.

Q. And you say that's the first time that you've had the examination of any of those?

A. That's right.

Q. Now, did you ever make any demands upon Mr. Keane or Mrs. Vermillion or any other person in Mr. Keane's office to examine the bank statements of the Lucky Friday Extension, bank records and checks?

(Testimony of James Anthony Allen.)

A. I made a demand sometime in September of 1946.

Q. Do you remember the circumstances of that demand?

A. Yes. I had asked Mrs. Vermillion, it wasn't in the nature of a demand at all, to forward down to me the bank statements, to mail them, not the cancelled checks, just the bank statements, so that I might check my deposits of the cancelled checks I had against the deposits that showed on the bank statements. That was on a Friday. She said [1128] that she would do it that night. This was in 1946. There were some other records that Mr. Grismer was going to bring down on Saturday. He was to get them at 11 o'clock. He went to the office at 11 o'clock, and she wasn't there. Mr. Keane, Mr. Horning, Mr. Jones and three or four more were over to Missoula to a football game, it was the date of the Idaho-Montana football game. Mr. Grismer called and said she wasn't there, so I called her in the afternoon and asked if she had mailed out the bank statements as she promised—

Q. May I interrupt? What company's records are you talking about?

A. Talking of the Montana Leasing Company bank statements. She said she had been ill, and couldn't go to the office, but that she would get them out Monday. On Monday Grismer was in the office, and she was talking long distance to Keane, who was at Missoula, and Grismer heard Keane tell her over

(Testimony of James Anthony Allen.)

the phone, he says "Allen is through, and been through a long time ago, and will get nothing"—

Mr. Erickson: Just a minute; I object here; maybe I don't understand, did you hear this conversation?

A. Mr. Grismer repeated to me what Mr. Keane said over the phone.

Mr. Erickson: I move it be stricken.

The Court: Well, ordinarily that would be stricken, [1129] but there's a charge of conspiracy, and I think the evidentiary rule works both ways.

Mr. Erickson: Yes, I didn't quite understand; was that Grismer?

The Court: Yes, he says that Mr. Grismer says that Mr. Keane said something over the phone to Mrs. Vermillion.

Mr. Erickson: Then I have no objection.

The Court: Objection withdrawn.

Q. (By Mr. Etter): Will you continue, then, Mr. Allen?

A. I called her back, I called Mrs. Vermillion, and asked her if that was true, and she says, "Yes, my instructions are to give you nothing."

Q. When did you call Mrs. Vermillion back?

A. It would be the following Monday, and I think it would be September 28, or some such date.

Q. And did she—what did she say to you, exact words?

A. She said that her instructions would come from Keane first, that she'd have to carry out Mr. Keane's instructions.

(Testimony of James Anthony Allen.)

Q. And you did not, or did you, see the records?

A. Never did.

Q. Did you have any conversation with Mr. Keane concerning the keeping of the Lexington Silver Lead or Montana Leasing records in Mr. Keane's office?

A. Oh, yes, in the beginning everything was to be kept in his office; we just left all the legal work, all the [1130] financial transactions, all the books, for Mr. Keane.

Q. And did you have occasion to discuss the financial condition of the Montana Leasing and the Lexington Silver Lead with Mr. Keane during the year of 1945?

A. Yes, on many occasions.

Q. And what was the nature of those discussions, generally?

A. Well, the investment was running—we were not into production, that is, continuous production, but it was expected 'most any time that it would be, and of course there were a good many obstacles unforeseen that had come up during that period, because as I say, of the shortage of labor and materials and so forth, but there was never any grave concern; there was never any question in my mind but what there wasn't adequate finances to carry out what we were doing.

Q. What was the financial condition of the Lexington Silver Lead, let's put it this way, as to its operating costs in Montana and the money available to pay those costs? A. At what period?

(Testimony of James Anthony Allen.)

Q. If you know, in 1945?

A. Well, there would have been plenty of money.

The operating cost of the mine—

Mr. Etter: Just a minute, now; may I just have a moment, your Honor?

The Court: You may. [1131]

Q. (By Mr. Etter: Can you refresh your recollection from those records as to what your operating costs were in the operation of the Lexington Silver Lead Mines property at Neihart, Montana?) A. For the entire year?

Q. For the year 1945.

A. The operations of the mine for the year 1945 was \$71,598.67, that is the capital investment.

The Court: How much was that?

A. \$71,598.67.

Q. And was there any income from operations that year?

A. That would be less the proceeds, yes; there was \$12,066.20 production.

Q. And then what was your net operating loss in the year 1945?

A. Well, it wouldn't be classed as a loss; it would be a capital investment over and above the production, because it was development, and not a loss in the operation; \$71,598.67.

Q. That would be an operating cost, at least?

A. That's right, over and above the production.

Q. For which you did not receive income from the mine operation? A. That's right.

Q. Now, the book from which you're testifying,

(Testimony of James Anthony Allen.)

was that book made up under your direction? [1132]

A. Yes, it was.

Q. And from what record?

A. From the mine records, kept at the office of the mine.

Q. And who kept those records at the mine?

A. The general superintendent and the book-keeper at the mine, and those were under my direction.

Q. And did you assemble those sheets each year?

A. I helped, yes.

Q. And those are the figures from which you're refreshing your recollection? A. That's right.

Q. Now, you heard the testimony here by Mr. Keane that in the middle of 1945 you and Mr. Keane had to figure something out to bail yourselves out? A. I did, and that's—

Q. What have you to say to that statement, Mr. Allen?

A. Well, it's not only the worst falsehood that was ever spoken, but it's a ridiculous statement.

Q. Why do you say that?

A. Well, after seeing the Independence audit, and having the Delaware records, the royalties paid during the year for the Delaware Mines Corporation, which was investing all of its money, in addition to my personal investment, if Mr. Keane's audit of the Independence was correct, which was committed to the financing the same as the Delaware, the [1133] operations at the mine for the month of January of 1945 was \$6,140.08; February,

(Testimony of James Anthony Allen.)

\$6,642.53; March, \$6,341.04; April, \$5,077.41; May, \$5,976.94; June, \$4,971.67; July, \$6,007.74, and August, \$4,266.87. If \$3,000 a month additional expense was added to that, there would still be a balance in August of twenty some thousand dollars.

Q. A balance of twenty some thousand?

A. A balance ready for finance between the Independence and the Delaware and combined with what I personally put in, not knowing what Mr. Keane might have put in.

Q. There would have been \$20,000 in the black?

A. Yes, assuming there was an additional \$3,000 a month, that I don't say there is.

Q. I see. Did the company at that time have any other obligations?

A. None whatever, excepting what outstanding payroll checks that would always be in float, of maybe a thousand dollars. The only other indebtedness they had would be the commitment to the Independence Lead Mines and the Delaware Mines, which was not a pressing obligation, and which was to be paid out of the production. It was an investment in the Lexington, and not a loan of money.

Q. Did the company owe any other than what you've mentioned?

A. None whatever, excepting the contracts for the acquisition of the property, which were not a liability, but were [1134] payable out of the smelter returns.

Q. I see, and that was the condition of the company at that time?

(Testimony of James Anthony Allen.)

A. It was. I say, it was if the audits are right as we now see them. I didn't see them at that time, and I had no fear but what there would be.

Q. Did you know at that time how much money Mr. Keane was putting into the property from the Independence Lead Mines Company treasury?

A. No, I did not. I didn't have the exact knowledge of it.

Q. Did he ever inform you how much he was putting in there?

A. He said, I don't know any exact amount, but was putting it in. On two or three times, or many times, I had asked him to complete these things, to complete the corporations, to have an audit of what we were doing each year. He would always say "Well, as soon as I get through with the Kingsbury-Marquart litigation" or something else, not that there was any concern about it, but that he was just too busy, and we would have an audit of the Delaware and Independence, and he would just procrastinate on it.

Q. Now, during 1945, besides the funds that were going into the property at Neihart, Lexington Silver Lead, were you also putting some funds into that property, Mr. Allen?

A. Indeed I was; in 1945?

Q. Yes, in 1945. [1135] A. Yes.

(Whereupon, four checks, Allen to Montana and Keane, 1945, were marked Defendant's Exhibit X for identification.)

(Testimony of James Anthony Allen.)

Q. I'll hand you Defendant's exhibit for identification marked X, and ask you if you recognize those, Mr. Allen? A. Yes, I do.

Q. Examine them, please. A. Yes.

Q. Will you state what they are?

A. Well, there's one check of a thousand dollars on the Old National Bank, the J. A. Allen account, to the Montana Leasing Company; a check to F. C. Keane for \$1500.00, J. A. Allen personal account, the Old National Bank; another check to F. C. Keane for \$1,000.00 on my personal account in the Old National Bank; another check for a thousand dollars to F. C. Keane; these checks were for the use of the Montana Leasing Company.

Q. Were they given to the Montana Leasing Company for deposit?

A. Well, they were deposited through Keane's office for the Montana, and I see his endorsement on them.

Q. And does the total appear on there of those checks, Mr. Allen? A. Yes, there is \$4500.00.

Q. Of your personal checks? [1136]

A. Personal checks. There's another thousand that the bank record will show, but the slip hasn't—we haven't been able to find it. My bookkeeper left a month ago for the Army.

(Whereupon, fifteen checks, Allen to Lexington Silver, 1946, were marked Defendant's Exhibit Y for identification.)

Q. I'll hand you, Mr. Allen, what is marked for

(Testimony of James Anthony Allen.)  
identification Defendant's Y, and I'll ask you if  
you recognize what that is?

A. Yes; these are checks on my personal account  
payable to the Lexington Silver Lead Mines, Inc.,  
for the year 1946.

Q. Are each and all of those checks from your  
account, as you say, to Montana Leasing or Lexington  
Silver Lead?

A. They are; my personal account.

Q. Your personal checks; and have you tabulated  
the total of those personal checks, Mr. Allen?

A. There's a total of \$70,000.

Q. \$70,000?

A. \$70,000. There's \$5,000 more in two checks,  
one dated August 17, 1946, for \$3,000, and \$2,000 to  
Lexington on November 19, 1946.

Q. Those checks are not contained in this?

A. No, but it does show on the bank statement,  
so it would be a total of \$75,000. [1137]

Q. You haven't been able to find those two  
checks?

A. They're in the office somewhere, or somewhere  
in the files here.

Q. But the total of that amount and the amount  
you've shown here was what?

A. \$75,000, plus the additional one for 1945,  
that makes \$6,000 for 1945 and \$75,000 for 1946.

(Whereupon, fifty-eight checks, Allen to Lex-  
ington Silver, 1947, were marked Defendant's  
Exhibit Z for identification.)

(Testimony of James Anthony Allen.)

Q. Now I'll hand you at this time, Mr. Allen, Defendant's for identification Z, and I'll ask you if you'll examine those, and if you recognize them, and tell us what they are?

A. These are additional checks on my personal account to the Lexington Silver Lead Mines in the year of 1947.

Q. And what is the total as you've tabulated it from your personal funds to the Lexington Silver Lead Mines in 1947? A. \$76,000.

(Whereupon, twenty-six checks, Allen to Lexington Silver, 1948, were marked Defendant's Exhibit AA for identification.)

Q. Mr. Allen, I will now hand you Defendant's for identification marked AA, and ask you to examine it and tell me what that is; what they are, I should say? [1138]

A. These are personal checks to the Lexington Silver Lead Mines.

Q. And what's the total?

A. For the year 1948, the total is \$27,500.

Q. And this is your own personal funds?

A. That's right.

Q. To the Lexington Silver Mines.

(Whereupon, sixty-five checks, Allen and Lexington Silver to Mullen and Grismer, 1947, were marked Defendant's Exhibit BB for identification.)

Q. Handing you Defendant's for identification

(Testimony of James Anthony Allen.)

BB, Mr. Allen, I'll ask you if you will examine these and tell us what they are?

A. These are checks, excepting this photostat, on the Lexington Silver Lead Mines account, signed by me mostly; there's a trustee check here too—payable to William Mullen and J. V. Grismer, and in this case the Pilot Silver Lead Mines, Inc., totalling for Grismer \$15,147.85, to Mullen \$5,815.03, Pilot Silver Lead Mines, and to Grismer during 1946, \$7,072.50, and these are for the—

The Court: What year did you say that was?

A. 1946.

The Court: For Grismer?

A. That's right; for 1947, \$8,075.35, making a total of \$15,147.85. [1139]

Q. To Grismer?

A. To Grismer and Mullen for the Pilot and the Extension companies.

Q. For the Pilot and Lucky Friday Extension?

A. For the Pilot and Lucky Friday Extension.

Q. Paid by you? A. Paid by me.

Q. And this is a photostat of the government's Exhibit for \$7,000, heretofore introduced?

A. It is.

Q. And paid by you to the Pilot Silver Lead Mines, Inc.? A. That's right.

Q. And is that a photostat of the exhibit which appears? A. Yes, sir.

The Court: That's paid to the Pilot?

A. Paid to the Pilot Silver Lead, \$7,000.

Q. Now, this \$4500.00, Mr. Allen, and the

(Testimony of James Anthony Allen.)

\$70,000, and the \$76,000, and the \$27,500, then, were paid by you into the Lexington account?

A. That's right.

Q. And this amount appearing here, totalling \$15,000 to Grismer, and the check to Pilot, and to Mullen, was paid to the Pilot Silver Lead Mines and Lucky Friday Extension by you?

A. That's right. [1140]

Mr. Etter: At this time, your Honor, I'd like to move that the defendant's exhibits Y, X, AA, Z, and BB be admitted in evidence.

Mr. Erickson: May I ask a question on voir dire?

The Court: You may.

#### Voir Dire Examination

By Mr. Erickson:

Q. On Exhibit BB, Mr. Allen, BB is a series of checks on Lexington Silver Lead signed by Beatrice McLean; what do those checks represent?

A. Those are payments to Mullen and Grismer.

Q. For what?

A. For the benefit of the Pilot and Extension; they were in the employ. The reason for that was that when we came into the companies they were without funds. Keane had permitted the charter and the articles to lapse. The work in making the filings of the Social Security and withholding and everything else would be too much, so it was all carried in the one account, for which that was

(Testimony of James Anthony Allen.)  
making its regular monthly remittances on Social Security.

Q. This was Lexington money, then, paid to Pilot?

A. It was my personal money to Lexington, used for that, and to save the bookkeeping cost done in that manner.

Q. Your personal money, although they're Lexington Silver Lead checks?

A. Well, I wouldn't say that, Mr. Erickson. That's true, but [1141] I've put the money into the Lexington.

Mr. Erickson: I see. We have no objections to any of the exhibits.

The Court: Exhibits Y, X, AA, Z, BB, which have been offered, are admitted; there's no objection.

(Whereupon, Defendant's Exhibits X, Y, Z, AA and BB for identification were admitted in evidence.)

Direct Examination  
(Continued)

By Mr. Etter:

Q. To clarify one point, the part of Exhibit BB, Mr. Allen, which appears at the top of the checks, and which you said is a photostat, I'll hand you now the Plaintiff's Exhibit No. 18, and ask if that is a photostat of that self-same check which is also in the evidence? A. Yes, it is.

Q. All right. Mr. Allen, I'd like to hand you

(Testimony of James Anthony Allen.)  
the defendant's Exhibit 8—

The Court: I don't think so; that must be M.

Q. Defendant's Exhibit M, excuse me, and ask if you recognize that? A. Yes, I do.

Q. And I'll ask you to turn the page. Do you recognize either of those signatures?

A. I recognize F. C. Keane's, but I don't recognize this as my signature, J. A. Allen.

Q. All right. Do you recall the first time that you ever saw [1142] this instrument that I have here marked Defendant's Exhibit M?

A. Yes. I can't say the exact date.

Q. When was it, Mr. Allen, approximately, that you first saw this exhibit?

A. It would be March of '47.

Q. Are you sure—you're sure of that month, so that you think it was about March?

A. Quite sure it was March; could be February; in fact, I believe—

Q. What were the circumstances concerning your first view of this document marked Defendant's Exhibit M?

A. Keane called me from the Davenport Hotel to my office. I was at my office. We hadn't been speaking; I was surprised at the call. He called me over to the room, and said he was subpoenaed down here by the Securities and Exchange Commission, he and Mr. Randall; that Randall had testified in the morning, and that Mrs. Randall had called him and told him that Randall couldn't discuss anything with him, he was put under oath

(Testimony of James Anthony Allen.)

not to discuss things with him. He had that in his suitcase, a small overnight bag which was lying on the floor and open. He pulled it out; he says "I think I can take care of these things if you'll sign this," so I looked at it and read it. He had the partnership aspect of it there. I said "That's a well-written [1143] note, and I believe that is the terms of it, but this was never a partnership," and that I would execute the note if he would prepare the corporations and make it a corporation instrument; that at no time was it ever a partnership, and that is the first time that he had ever raised the question of partnership.

Q. With you? A. With me.

Q. What did he say when you told him that, Mr. Allen?

A. He threw it back in the suitcase, and he says "I'll take care of it," or do something; I can't remember just what he did say.

Q. Did you have any further conversation with him? A. No.

Q. Now, when he showed you this document were there any names appearing where the names now appear on the second sheet?

A. No, there was no names whatever on it.

Q. And it was in blank? A. In blank.

Q. And that was in March of 1947?

A. Yes, February or March.

Q. All right. Now, Mr. Allen, I would like to show you the Plaintiff's Exhibit No. 105, which

(Testimony of James Anthony Allen.)

appears to be a check from J. A. Hogle and Company. I'll ask you to look at the front of that check. I'll ask you to turn it over now, [1144] Mr. Allen, and will you look at that signature, "J. A. Allen"? Is that your signature, Mr. Allen?

A. No, it is not my signature.

Q. Did you ever sign your signature the way that appears?

A. I have never signed the signature and I have never seen that check until it was introduced here yesterday.

Q. Now, as relates to the signature which appears upon the Defendant's Exhibit M, as related to the signature appearing upon the Plaintiff's Exhibit 105, what have you to say?

A. It looks like the—

Mr. Erickson: Is this for—well, I think the witness is competent to state. I'll withdraw any objection.

A. Well, it's not my signature on either instrument. The signature on the check has the appearance of being identical with that on the note that was signed by F. C. Keane; the dots would indicate that.

Q. I'll ask you, Mr. Allen, directing your attention to the Plaintiff's Exhibit No. 105, if you received this check in the mail?

A. No, I did not. I have never seen the check until yesterday.

Q. And I'll ask you, Mr. Allen, if you personally

(Testimony of James Anthony Allen.)

sold any stock through J. A. Hogle and Company and delivered it to them a few days prior to this date marked on this Exhibit 105, being the date of December 3,—well, withdraw that— [1145] I'll ask you whether on or about November 29 of this year 1945, you delivered any stock certificates to J. A. Hogle and Company for sale? A. I did not.

Q. Now, you stated that from refreshing your memory with those records of yours, that there was, I think, a \$70,000 operating loss in 1945, approximately? A. Yes.

Q. Have you the record for 1946 available there?

A. Yes, I have.

Q. And what does it indicate, Mr. Allen?

A. The total cost of the mine operation in 1946 for labor and supplies, road maintenance, everything, was \$119,004.30; the production was \$62,709.03, leaving a development cost or capital investment of \$56,297.27.

Q. That's in 1946? A. That's right.

Q. Now, was there any necessity during that year from those records, for "bailing out" as Mr. Keane stated, Mr. Allen?

A. Never, never to my—no, absolutely, there was not.

Q. And had you discussed further with Mr. Keane the Independence contribution during this year?

A. Yes. The Independence, he was selling large blocks of the Clayton stock for the purpose of investing it in Montana. [1146]

(Testimony of James Anthony Allen.)

Q. Is that what he told you?

A. Yes, and had sold lots of it, and was doing it then, in the months of June and July and August.

Q. Now, had you at that time made any examination of the records, that is, the bank records that were maintained at that time in the bank at Wallace, Idaho?

A. No, because the question was never—

Q. Did you ever raise it with Mr. Keane?

A. No, the condition didn't exist to where it was necessary.

Q. In 1946? A. That's right.

Q. Now, when was it that you first had any difficulty with Mr. Keane?

A. Well, during the month of August a suspicion become with Keane, beginning in July, for his failure to pay small accounts of the Pilot.

Q. What year is that? A. 1946.

Q. All right.

A. In the months of September and October I was called upon and did put into the Lexington Silver Lead account approximately \$20,000 or \$25,000—

The Court: When was this?

A. The month of September and October. These checks will show. Prior to that time, and during the course of the— [1147] oh, from early January of 1946, Keane would make appointments and wouldn't keep them; he'd be evasive. He was drinking some, but not any more than the ordinary—

(Testimony of James Anthony Allen.)

Horning or the rest of them, as far as I could detect. On many occasions Mr. Callahan was after me for to complete this re-organization of the Lexington so that the titles and so forth would be in good shape on them. There's 1500 Lexington stockholders that own the plant and equipment.

Q. Well, did you call upon Mr. Keane?

A. I did, after several times, and got to the point of exasperation; I went down to his house sometime in October.

Q. Before that had you called upon him by phone or trip or otherwise, before that incident?

A. Oh, I made repeated trips to Wallace, and would wait for him; he'd make an appointment, and I'd wait maybe two or three days; he'd be in town, and say "Well, I'm too busy now; see you at 8 o'clock tonight" then he wouldn't be there, and change it to 9 o'clock in the morning. That went on for quite a while.

Q. You were here in the courtroom when you heard Mr. Keane testify that you came down to his house at 3 o'clock in the morning on December 26; state whether or not that is correct, as to the date and time?

A. That is an absolute falsehood. In the first place, it would be the day after Christmas; I wouldn't be up to [1148] Wallace on Christmas night. I went to Mr. Keane's house perhaps in October, and went down to his house at 9:30 in the evening, after he had an appointment with me in

(Testimony of James Anthony Allen.)

the afternoon and for two days previous, and he would not show up. I was not intoxicated, but I was in more of a pleading mood to get him to do something, to make a disclosure of what was going on with these corporations.

Q. What did you say to him?

A. I asked his wife, if she had any influence with ~~the~~ <sup>Mr.</sup> wished she would use it to see what was ~~done~~ <sup>done</sup> with these corporations, and what could be done.

Q. You been acquainted with Mr. Keane's wife ~~since~~ <sup>at</sup> the time you made this trip?

A. Yes. Mr. Keane's wife was secretary in the Callahan ~~co~~ solidated when I first became associated with it, before she was married to Mr. Keane.

Q. All right, what conversation further did you have with Mr. Keane?

A. Well, there was considerable conversation; it was all relating to if he would make a disclosure, which he said he would, and he got sore because I come down there and perhaps asked his wife to use her influence with him, that the bills weren't being paid, and Joe had been after him, and he agreed then he would do it if we'd give him some time.

Q. Did you leave then?

A. I left about 10 o'clock or 10:15.

Q. You didn't see him that evening again?

A. I didn't see him at all that evening, no.

Q. Now, you heard Mr. Keane testify that you made a statement there that "I've got \$200,000,

(Testimony of James Anthony Allen.)

and you haven't," I don't know what it was; "You'd better turn everything over to me, because I've got the \$200,000." What have you to say about that statement?

A. Well, it's almost unanswerable. Of course I didn't say it. I know of no purpose or reason for saying it. We certainly wanted him to turn over things to complete these corporations, but it was for the purpose of turning over what titles there might be in his name, or contracts, but not for the sake of giving him any money, or that I had \$200,000 and that I would take it.

Q. There was nothing of that kind said?

A. Absolutely not.

Q. And at any later date that you met Mr. Keane was there anything ever said about that supposed statement that you made? Did Mr. Keane ever mention it to you?

A. Never. The first I heard of it was right here, the first time I ever heard such a statement.

The Court: Are you through with this phase?

Mr. Etter: Yes, with this phase. [1150]

\* \* \*

(Whereupon, at 4:45 o'clock p.m., the Court took a recess in this cause until Thursday, June 16, 1949, at 10 o'clock a.m.)

Spokane, Washington

Thursday, June 16, 1949, 10 o'clock a.m.

(Ninth day of trial)











